

United States  
Circuit Court of Appeals  
For the Ninth Circuit. 1084

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PACIFIC COAST PIPE COMPANY, a Corpora-  
tion,

Appellant,

vs.

CONRAD CITY WATER COMPANY, a Corpora-  
tion, PONDERA VALLEY STATE BANK,  
a Corporation, CONRAD BANKING COM-  
PANY, a Corporation, CONRAD TRUST &  
SAVINGS BANK, a Corporation, CONRAD  
MERCANTILE COMPANY, a Corporation,  
JAMES T. STANFORD, Receiver, and  
PARIS B. BARTLEY, Trustee,

Appellees.

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Transcript of Record.

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Upon Appeal from the United States District Court for the  
District of Montana.

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Filed

APR 7 - 1917



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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## Names and Addresses of Attorneys of Record.

Messrs. DAY & MAPES, of Helena, Montana,  
Solicitors for Plaintiff and Appellant.  
O. W. McCONNELL, Esq., of Helena, Montana,  
J. A. McDONOUGH, Esq., of Great Falls, Montana,  
Solicitors for Defendants and Appellees.  
[1\*]

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*In the District Court of the United States in and for  
the District of Montana.*

IN EQUITY—No. 55.

PACIFIC COAST PIPE COMPANY,  
Plaintiff,

vs.

CONRAD CITY WATER COMPANY et al.,  
Defendants.

BE IT REMEMBERED that on May 14, 1915, the  
plaintiff filed its Bill of Complaint herein, being in  
the words and figures following, to wit: [2]

*In the District Court of the United States, District  
of Montana.*

PACIFIC COAST PIPE COMPANY, a Corpora-  
tion,

Complainant,

vs.

CONRAD CITY WATER COMPANY, a Corpora-  
tion, PONDERA VALLEY STATE BANK,  
a Corporation, CONRAD BANKING COM-

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\*Page-number appearing at foot of page of original certified Transcript  
of Record.

PANY, a Corporation, CONRAD TRUST and SAVINGS BANK, a Corporation, CONRAD MERCANTILE COMPANY, a Corporation, JAMES T. STANFORD, Receiver, and PARIS B. BARTLEY, Trustee,  
Defendants.

### **Bill in Equity.**

Comes now the complainant in the above-entitled action and for cause of action against the above-named defendants, complains and alleges:

1. That the complainant is and was at all of the times hereinafter mentioned, a corporation organized and existing under the laws of the State of Washington and engaged in business at the city of Seattle in said State and a citizen of the said State of Washington.

2. That each of the defendants, the Conrad City Water Company, the Pondera Valley State Bank, the Conrad Banking Company, the Conrad Trust and Savings Bank and the Conrad Mercantile Company is a corporation organized and existing under the laws of the State of Montana and engaged in business in said State and a citizen of the State of Montana; that each of the defendants James T. Stanford and Paris B. Bartley is a citizen of the State of Montana.

3. That the amount involved in this controversy, exclusive of interest and costs, exceeds the sum or value of three thousand dollars (\$3,000). [3]

4. That the defendant, the Conrad City Water Company, is and has been ever since the 26th day of August, 1910, a corporation organized under the laws of the State of Montana for the purpose of

constructing and operating a system of water works in the town of Conrad in the county of Teton, State of Montana, and engaged in supplying the inhabitants of the said town with water. That on the 16th day of October, 1913, this complainant commenced in this court, an action against the defendant, the Conrad City Water Company, to recover the sum of Eight Thousand Seven Hundred Forty-eight Dollars and Fifty-five Cents (\$8,748.55) with interest thereon at the rate of eight per cent (8%) per annum from the 28th day of February, 1913, and costs of suit, being the amount due upon a certain promissory note dated the 7th day of February, 1911, and made, executed and delivered by the Conrad City Water Company to this complainant, the Pacific Coast Pipe Company, in payment for certain pipe and other materials theretofore furnished during the year 1910 by the Pacific Coast Pipe Company to the Conrad City Water Company in the course of the construction of the water plant of the said company at the town of Conrad, and which said pipe and material were used in the construction of the said plant. That after the filing of the complaint in the said action, the plaintiff therein, the complainant herein, filed its affidavit and undertaking on attachment as required by law, and on the 3d day of November, 1913, a writ of attachment was issued in the said action out of this court directed to the marshal of this court commanding him to levy the same upon the property of the Pacific Coast Pipe Company. That thereafter and on the 7th day of November, 1913, the marshal of this court levied the said writ of attachment upon certain property of the

defendant, the Conrad City Water Company, by filing in the office of the county clerk and recorder of Teton County, Montana, a copy of the writ of attachment, together with a notice of attachment [4] describing the property attached, which said property is more particularly set forth and described in a copy of the said notice of attachment so filed in the office of the clerk and recorder of Teton County, attached hereto and made a part hereof marked Exhibit "A." That by reason of the filing of the said writ of attachment this complainant obtained a lien upon the property and rights described in the said notice of attachment.

That thereafter, such proceedings were had in the said action that on the 2d day of July, 1914, this complainant, the Pacific Coast Pipe Company recovered in this court a judgment against the defendant, the Conrad City Water Company, for the sum of Nine Thousand Six Hundred Eighty-nine Dollars and Forty-seven Cents (\$9,689.47), with costs taxed at Seven Hundred Eleven Dollars and Twenty-five Cents (\$711.25), no part of which said sum has been paid. That on the 14th day of April, 1915, this complainant caused to be issued out of this court an execution upon the said judgment directed to the marshal of the District of Montana as in such cases made and provided, but has been unable to have the said execution satisfied out of the property of the Conrad City Water Company by reason of the facts and things hereinafter set forth.

5. That the plant of the Conrad City Water Company was constructed and its property, rights and franchises were acquired pursuant to an agreement

entered into between one Ben Hager and one W. G. Conrad now deceased, whereby the said Conrad was to furnish, or procure to be furnished through companies controlled by him, the necessary moneys and the said Hager was to superintend the work of construction. That the company was to be organized with a capital stock of the par value of One Hundred Thousand Dollars (\$100,000), and an issue of bonds, of which enough was to be sold to return to said Conrad the moneys so advanced by him for construction and the stock and remaining bonds were to [5] be divided between him and the said Hager. That pursuant to the said agreement, Hager appropriated the water and acquired title to the lands referred to in Exhibit "A." That the said Hager also obtained from the Town of Conrad a franchise granted by Ordinance No. 2A passed and approved on the 13th day of November, 1909, granting to Hager and his successors and assigns the right to construct, maintain and operate a gravity system of waterworks with the right to supply the inhabitants of the town, now city of Conrad for a period of Thirty (30) years.

That pursuant to the said agreement the said Ben Hager, together with one Geo. H. Stanton, then the personal attorney of the said W. G. Conrad and acting in his behalf, and one M. S. Darling, then a civil engineer in the employ of the said W. G. Conrad and acting in his behalf, did on the — day of August, 1910, make, acknowledge and file with the Secretary of State of Montana, the article of incorporation of the Conrad City Water Company, one of the defendants herein, with the capital stock of the par value of One Hundred Thousand Dollars (\$100,000),



divided into One Hundred Thousand (100,000) shares, of which twenty (20) shares were subscribed by the incorporators, but for which no consideration was paid.

That after filing the articles of incorporation the incorporators met on the 26th day of August, 1910, and organized the said corporation by the election of Ben Hager, M. S. Darling and M. B. Hager, the son of Ben Hager, Directors. These directors organized by the election of M. B. Hager, President, Ben Hager, Vice-President and M. S. Darling, Secretary. On the same date the stockholders of the Conrad City Water Company, consisting of Ben Hager, M. S. Darling and M. B. Hager, who held only the twenty (20) shares of stock, which had been subscribed for by the incorporators, by resolution accepted the offer of Ben Hager to sell to the company the system of waterworks in the town of [6] Conrad, including all contracts, rights, reservoir sites, reservoirs, pipe-lines, easements, rights of ways, machinery and equipment and all property owned and used by him in the conducting of the business of the said waterworks system, including franchises granted by the town of Conrad to be paid for by the issuance and delivery to the said Ben Hager, as full paid, ninety-nine thousand nine hundred eighty (99,980) shares of the stock of the Conrad City Water Company, being all of the remaining shares of the said company then unsubscribed for, and the promissory note of the company for the sum of Seventy Thousand Dollars (\$70,000), which note was to be secured by Eighty Thousand Dollars (\$80,000) face value of the first mortgage six per

cent (6%) gold bonds of the company to be thereafter issued and negotiated for the corporate purposes of the company by the officers, and authority was conferred upon the officers to carry into effect this resolution. Thereupon there was issued to Ben Hager, ninety-nine thousand nine hundred eighty (99,980) shares of stock and a series of notes aggregating Seventy Thousand Dollars (\$70,000). Thereafter on the 26th day of August, 1910, an issue of Eighty Thousand Dollars (\$80,000) in bonds was executed by the officers of the Conrad City Water Company secured by a deed of trust covering all of the property, rights, etc., of the said company executed by the Conrad City Water Company to the Pondera Valley State Bank, one of the defendants herein, which said deed of trust was recorded on the 14th day of December, 1910, in Book 4B at page 148 in the office of the county clerk and recorder of Teton County. That the entire issue of bonds was delivered to the said Ben Hager as security for the so-called promissory note, and were then delivered by said Hager to the said W. G. Conrad to be sold in accordance with the terms of the agreement which had theretofore been entered into between the said Ben Hager and the said Conrad prior to the organization of the [7] said company. That the entire issue of stock so delivered to Hager was by him delivered to said Conrad as further security for the fulfillment of the terms of said agreement. That at the time of the issuance and delivery of the said bonds and trust deed, the said Conrad City Water Company was not indebted to the said Ben Hager or to the said W. G. Conrad in any sum whatsoever.

That on the 26th day of August, 1910, neither the said Ben Hager nor the said W. G. Conrad had advanced any moneys to the Conrad City Water Company in excess of the sum of Fifty-one Thousand Dollars (\$51,000) which said sum had been advanced by the said W. G. Conrad through the medium of Conrad Brothers, a partnership composed of the said W. G. Conrad and the estate of Charles E. Conrad, which partnership on or about the 13th day of September, 1911, became merged in the defendant, the Conrad Banking Company, a corporation engaged in business at Great Falls, Montana, or through the medium and under the name of the Conrad Townsite Company, a corporation engaged in business at the town of Conrad, or the Pondera Valley State Bank, a corporation engaged in business at the town of Conrad, in all of which said corporations the said W. G. Conrad was a dominant stockholder and officer, and that the moneys so advanced by these corporations were in fact advanced to the said Hager at the direction and upon the credit of the said W. G. Conrad pursuant to the terms of the contract which had previously been entered into between the said Conrad and the said Hager and formed the consideration for the issuance to Hager of the shares of stock of the said company. That the property, rights and franchises conveyed by Hager to the said Water Company was not worth the sum of One Hundred Thousand Dollars (\$100,000), the par value of the stock issued therefor, as Hager, Conrad and the other directors of said water company well knew.



6. That the said Ben Hager as the ostensible manager of the [8] said corporation, but in fact as the employee of W. G. Conrad, took possession of the plant thus transferred to the Conrad City Water Company and proceeded to operate the same. That no further or other meetings of the corporation was held and the directors and officers of the corporation performed no functions whatever, until the 18th day of April, 1914, at which time a meeting of the directors of the corporation was called, at which there were present Ben Hager, M. S. Darling, and M. B. Hager and W. G. Conrad as a stockholder. M. B. Hager resigned from the position of officer and director and H. W. Conrad, who held no shares of stock in the company except qualifying shares transferred to him and for which he paid no consideration, was elected as an officer and director in his place and Ben Hager elected president of the company. That on the said date the said Ben Hager under the direction and control of W. G. Conrad, caused the said directors to pass a resolution directing the president and secretary to execute note covering the moneys advanced for the construction of the waterworks and building the plant as follows: to Conrad Brothers for the sum of \$48,275, to the Conrad Townsite Company for the sum of \$13,930, to the Pondera Valley State Bank, \$5,419, to W. G. Conrad \$850, which said moneys were already represented by the notes theretofore executed and delivered to Hager. The president and secretary were also directed to turn over and deliver to W. G. Conrad as trustee the issue of bonds secured by the said

trust deed to the Pondera Valley State Bank, of the par of Eighty Thousand Dollars (\$80,000) as security for the said notes. That the said Conrad City Water Company was not upon said date indebted to the said several corporations in any amount whatsoever, but that the notes thus executed were but evidences of moneys which had theretofore been advanced through the medium of these several organizations by the said W. G. Conrad for the [9] construction of the said water plant in accordance with his agreement with the said Ben Hager. That the said Ben Hager and the said W. G. Conrad knew, upon the 18th day of April, 1911, at the time of the issuance of the said notes hereinabove referred to that the claim of this complainant was then a valid outstanding obligation of the corporation, as evidenced by the promissory note sued on. That on the said 18th day of April, 1911, the said W. G. Conrad was a dominant stockholder and officer in each of the organizations to which the notes were thus issued and that the said transactions as shown upon the books of the company were fictitious and void as against the claim of this complainant, and were made and had by the said Ben Hager and W. G. Conrad for the purpose of hindering and delaying this complainant in the collection of its said claims.

That this complainant both at the time it delivered the supplies to said Water Company, and at the time it accepted the note in payment therefor had no knowledge or notice of the issuance by said company of the promissory notes or of the delivery of said bonds to Hager.

7. That by means of transactions, the details of which are unknown to complainant, between the defendants, the Pondera Valley State Bank, Conrad Banking Company, and Conrad Trust and Savings Bank, of which corporations W. G. Conrad was at all times a dominant stockholder and officer, the issue of bonds aggregating Eighty Thousand Dollars (\$80,000) has come into the possession of these several companies who are now asserting some claim to them as indebtedness of the Conrad City Water Company prior to the indebtedness of this complainant, by virtue of the trust deed to the Pondera Valley State Bank executed under the resolution of August 26, 1910, but that whatever interests the said corporations, or either of them may have in the said bonds, the interest was acquired by the said corporations respectively at a time when W. [10] G. Conrad was a dominant stockholder and an officer and with full knowledge on the part of the said corporations of the circumstances under which the said bonds were issued and the trust deed delivered, and that the said trust deed and the said issue of bonds is fraudulent and void as to the claim of this complainant under the judgment hereinabove referred to. That the issue of stock of the Water Company has, by means to complainant unknown, come into the hands of some of the defendants, who are now using it to dictate the management of the Water Company.

10. That after the recovery of the judgment hereinabove referred to by this complainant against the Conrad City Water Company, the officers of the Con-

rad City Water Company abandoned their functions and turned the affairs of the company over to the management of the officers in charge of the several defendant corporations hereinabove referred to. That on the — day of March, 1915, the defendant, the Conrad Mercantile Company, a corporation in which the Conrad interests owned the capital stock, commenced an action in the District Court of the Eighth Judicial District of the State of Montana in and for the county of Teton against the Conrad City Water Company to foreclose a pretended mechanic's lien for the sum of Fifty-four Dollars and Seventy Cents (\$54.70) for supplies and materials furnished to the Water Company between the 1st day of September, 1914, and ending on the 10th day of March, 1915. That the said complaint, in addition to the praying for the foreclosure of the lien, prayed for the appointment of a receiver of the Conrad City Water Company and set forth as the grounds of the said complaint that the Conrad City Water Company was insolvent and its affairs in a chaotic condition and that in order to protect the plaintiff from great loss, damages and detriment, and to enable the company to supply the inhabitants of Conrad with water, it was necessary that a receiver be forthwith [11] appointed to take charge of the assets and property of the said Conrad City Water Company. That upon the same day that the complaint was filed, the Conrad City Water Company appeared and confessed the allegations of the complaint and thereupon the Judge of the District Court of the Eighth Judicial District of the State of Montana in and for



the County of Teton, appointed the defendant James T. Stanford the receiver of all and singular the real and personal property of the Conrad City Water Company. That the said James T. Stanford thus appointed receiver is the president of the defendant, the Conrad Banking Company, and immediately upon his appointment as such receiver, took possession of all of the property, both real and personal of the Conrad City Water Company and now has the same in his possession and under his control, claiming the same by virtue of his appointment as said receiver. That the District Court of the Eighth Judicial District of the State of Montana in and for the county of Teton, had no jurisdiction to appoint the said receiver for the reason that the complaint in the said action did not set forth facts sufficient to confer upon the said court jurisdiction and that the said receivership was but a part and parcel of a scheme entered into by the said James T. Stanford and other officers of the defendant companies to obtain control of the affairs of the said Conrad City Water Company and with the intent to hinder and delay this complainant in satisfying the judgment hereinbefore referred to out of the assets and property of the Conrad City Water Company, properly applicable thereto. That the pretended mechanic's lien upon which said action is based was not filed until March, 1915, and the lien, if valid at all, is subsequent and subject to the lien of complainant upon the property and rights described in Exhibit "A" by virtue of the levy of the writ of attachment issued out of this court in the action in which the judgment

herein sued on was recovered. [12]

11. That the defendant, the Conrad Trust and Savings Bank, is a corporation engaged in the business of banking in the city of Helena, Montana, and the defendant P. B. Bartley is the cashier thereof. That during his lifetime, W. G. Conrad was the president and controlling stockholder thereof. That the said bank, or the said Bartley as trustee therefor, claims to own an interest in the issue of bonds secured by said trust deed and holds some or all of the capital stock of the Water Company, the exact character of which said claims or ownership is to this complainant unknown, but that whatever interest the said bank or the defendant Bartley, as trustee or otherwise, claims in said bonds or stock was acquired at a time when W. G. Conrad was president of said defendant bank and with full knowledge of all of the facts surrounding the issue of said stock and of said bonds, and the delivery thereof to said W. G. Conrad, and with full knowledge of the claim of complainant against the defendant water company.

12. That under and by virtue of the writ of execution heretofore issued out of this court upon the judgment recovered herein notice of garnishment was served on the 20th day of April, 1915, upon the defendant James T. Stanford, who, in answer thereto has stated that under and by virtue of the order duly given, made and rendered by the District Court of the Eighth Judicial District of the State of Montana in and for the county of Teton in the action hereinabove described in paragraph ten, he has taken into his possession all of the property and assets of the

defendant, the Conrad City Water Company and holds the same subject to the orders and directions of said Court and not otherwise for the benefit of the Conrad Mercantile Company and all persons interested in the affairs of the said corporation. That by reason thereof this complainant is unable to enforce the judgment of this Court by process of execution heretofore issued out of this court. That [13] the defendant, the Conrad City Water Company, is a *quasi* public corporation and that all of its property, including the property heretofore levied upon by the writ of attachment issued out of this court is necessary for its successful operation and that the value of the property and plant and water system consists in its being maintained and operated as a single plant and that it is impossible to sell the property levied upon under the writ of execution separate and distinct from the remaining property, rights and franchises of the Conrad City Water Company. That by reason thereof the complainant has no adequate remedy at law.

WHEREFORE, complainant prays as follows:

1. That a writ of subpoena issue out of this court directed to the defendants, the Conrad City Water Company, the Pondera Valley State Bank, the Conrad Banking Company, the Conrad Trust and Savings Bank, the Conrad Mercantile Company, James T. Stanford and Paris B. Bartley, commanding them and each of them, at a certain time, as provided by the rules of this court, to appear before this court and then and there full, true, direct and perfect answers make to all and singular the premises.

2. That each of the said defendants be required to set forth their claim of right to the possession or claim of title to any of the property belonging to the Conrad City Water Company which is subject to the process of this court in satisfaction of the judgment hereinabove described.

3. That an order be entered directed to the defendant, the Conrad City Water Company and the defendant James T. Stanford, requiring them to show cause at a date to be fixed by this Court, why a receiver should not be appointed by this Court to take possession of the property, rights and franchises of the defendant, the Conrad City Water Company, pending this litigation now in the hands of the defendant, James T. Stanford. [14]

4. That upon the final hearing of this cause a decree be entered declaring the trust deed from the Conrad City Water Company to the Pondera Valley State Bank, recorded in Book 4B at page 148 in the office of the county clerk and recorder of Teton County, together with the issue of bonds thereby secured, to be null and void as against the judgment of this complainant and that the judgment of this complainant be declared to be a first lien upon all of the property, rights and franchises of the said Conrad City Water Company and for such other and further relief in the premises as the nature of the circumstances of the case may require.

PACIFIC COAST PIPE COMPANY.

By E. C. DAY and  
THOS. A. MAPES,

Its Solicitors, Helena, Mont. [15]



**Exhibit "A" to Bill in Equity—Notice of Attachment.****NOTICE OF ATTACHMENT.**

Notice is hereby given that the property hereinafter described is attached, pursuant to the writ of attachment filed herewith and made a part hereof. Said property is particularly described as follows, to wit:

The Northeast quarter of the Southeast quarter of Section Eighteen (18) in Township Twenty-eight (28) North of Range Four (4) West of the Principal Montana Meridian, County of Teton, State of Montana; also all rights to the use of the waters of a certain spring known as the "Dipping Tank Spring," situate on the Northwest quarter of the Southeast quarter of Section Eighteen (18) in Township Twenty-eight (28) North, of Range Four (4) West, Teton County Montana, the waters of which Spring flow upon the Southwest quarter of the Northeast of said Section 18, also the use of all the surplus waters of a certain spring known as the "Watering Trough Spring," situate on the Southeast quarter of the Northeast quarter of said Section 18; also an easement or right of way for a water pipe-line through the south half of the northeast quarter of said Section 18; also that certain water-right, notice of which was filed by one Ben Hager for record in the office of the County Clerk and Recorder of Teton County, Montana, on the 17th day of November, 1909, and recorded in 9 B of Water Rights on Page 409, records of said Teton County,

being an appropriation of two cubic feet per second of the waters of a certain spring on or near the northwest quarter of the southeast quarter of said section 18; also the right, title and interest of Ben Hager and Birdie Hager his wife, in and to a certain contract made the 25th day of January, 1910, between Peter DeBoer and the said Ben Hager, by the terms of which said Peter DeBoer agreed to convey to the said Ben Hager his heirs and assigns the right to construct, maintain and use a reservoir situate partially upon the southeast quarter [16] of the southwest quarter and the southwest quarter of the southwest quarter of Section 8, in Township 28, North of Range 2 West, Teton County, Montana, and also a right of way through the Southwest quarter of said section eight, and the east half of the southwest quarter of section 7, in said last-mentioned township and range for a pipe-line to conduct water to the town of Conrad, which said contract is recorded in Book 5A of Miscellaneous at Page 318, records of said Teton County; also all of the east thirty feet of Lots Numbered 26, 27, and 28 in Block Numbered 4, of the Original Townsite of Conrad, in the County of Teton and State of Montana, according to the official plat thereof on file in the office of the Clerk and Recorder of Teton County, Montana.

\_\_\_\_\_,  
United States Marshal,  
By \_\_\_\_\_,  
Deputy.

Filed May 14, 1915. Geo. W. Sproule, Clerk.

Thereafter, on June 26, 1915, the Answer of defendants, Conrad City Water Co. et al., was duly filed herein, being in the words and figures following, to wit: [18]

(Title of Court and Cause.)

**Answer.**

Answer of Conrad City Water Company, a Corporation; Pondera Valley State Bank, a Corporation; Conrad Banking Company, a Corporation; Conrad Trust and Savings Bank, a Corporation; Conrad Mercantile Company, a Corporation, and Paris B. Bartley, Trustee.

Now come the defendants, Conrad City Water Company, Pondera Valley State Bank, Conrad Banking Company, Conrad Trust and Savings Bank, Conrad Mercantile Company, and Paris B. Bartley, Trustee, and for answer to the bill of complaint in the above-entitled cause admit, deny and allege as follows:

1. Admit the allegations of paragraphs 1, 2 and 3 of the bill of complaint.

2. Admit the allegations of paragraph 4 of the bill of complaint, except that these answering defendants deny that by reason of the filing of the writ of attachment the complainant obtained a lien upon the property and rights [19] described in the attachment that was prior or paramount to the lien theretofore existing against said property by virtue of the deed of trust described in the bill of complaint, and deny that the complainant has taken

the necessary or proper steps to have the execution issued by it satisfied out of the property of the Conrad City Water Company, and allege the fact to be that the execution in said case has not been returned *nulla bona* until long after the filing of said bill of complaint herein and the said complainant has not exhausted its rights or remedies as provided by law, nor has it levied upon, sold or attempted to sell any of the property belonging to the Conrad City Water Company or to satisfy the execution heretofore issued in said case.

3. As to the allegations of Paragraph 5, these answering defendants deny that the Conrad City Water Company issued its promissory note for the sum of \$70,000, or a series of notes aggregating \$70,000, or delivered the same to one Ben Hager, and deny that the issue of \$80,000 of bonds were delivered to the said Ben Hager as security for the said promissory note of \$70,000, and deny that at the time of the issuance and delivery of the bonds and trust deed the Conrad City Water Company was not indebted to Ben Hager or to the said W. G. Conrad in any sum whatever, and deny that on the 26th day of August, 1910, that Ben Hager or the said W. G. Conrad had not advanced any moneys to the Conrad City Water Company in excess of the sum of \$51,000, and deny that the partnership composed of W. G. Conrad and the estate of Charles E. Conrad ever, at any time or at all, became merged in the defendant, Conrad Banking Company, or through the medium or under the name of the Conrad Townsite Company, or the Pondera Valley State

Bank, and deny that the moneys advanced for the building of said plant formed the consideration for the issuance to Ben Hager of shares of stock of the Conrad City Water Company, and deny [20] that the property rights or franchises conveyed by the said Ben Hager to the Conrad City Water Company were not worth the sum of \$100,000, or that the said Ben Hager or W. G. Conrad, or any of the other directors of the Conrad City Water Company, knew the same were not worth the said sum of \$100,000, and deny that there was no consideration paid for the twenty shares of stock subscribed by the incorporators, but allege the fact to be that the said Ben Hager obtained the franchise from the town of Conrad for constructing, maintaining and operating a system of waterworks, with the right to supply the inhabitants of the town of Conrad for the period of thirty years, and sold said franchise together with a water right, together with a reservoir, use and rights of way for a pipe-line in conducting said water to and through the town of Conrad, together with other rights and claims, to the defendant, Conrad City Water Company for the consideration of 99,980 shares of the capital stock of said company.

4. And these answering defendants further allege the facts to be that there was advanced in the construction and building of said plant of the Conrad City Water Company the following sums of money by the following named persons: By Conrad Brothers the sum of \$48,275; by Conrad Townsite Company the sum of \$13,930; by Pondera Valley State Bank \$5,419; by W. G. Conrad \$850, which said



moneys so advanced were actually used and employed in the construction, building and equipment of the plant of the Conrad City Water Company, and that the sums so advanced as above mentioned were, by resolution of the Board of Directors of the Conrad City Water Company, evidenced by the promissory notes of the Conrad City Water Company, duly and regularly issued and delivered, and that the said promissory notes for said amounts to the above-named respective parties were, by resolution of [21] the Board of Directors of the Conrad City Water Company secured by the pledge of \$80,000 of first mortgage bonds of the said Conrad City Water Company, which said mortgage bonds were secured by the deed of trust referred to in the bill of complaint duly and regularly executed by the Conrad City Water Company and recorded on the 14th day of December, 1910, in Book 4B, at page 148, in the office of the county clerk and recorder of Teton County, Montana.

5. That the said notes of the Conrad City Water Company to the respective parties so mentioned as above described became due and were unpaid. That the \$80,000 of bonds secured by the said trust deed so pledged as security for said notes were duly and regularly sold in accordance with the statute in such case made and provided with reference to the sale of collateral so pledged, and the same were bid in at public auction by the answering defendant, Paris B. Bartley, Trustee, for the use and benefit of the parties to whom the Conrad City Water Company executed its notes and secured the same by the

pledge of said bonds secured by said trust deed.

6. That the corporation, Conrad City Water Company, named as defendant herein, did not execute any note to the complainant, nor did it at any time secure the complainant on any note it may have held by any pledge of bonds, nor was any indebtedness of the complainant in any way secured by the deed of trust above referred to.

7. These answering defendants further allege the facts to be that pursuant to the deed of trust the aforesaid creditors of the Conrad City Water Company, whose claims were thus secured by the deed of trust, required this answering defendant, the Pondera Valley State Bank, as trustee under said deed of trust, to institute foreclosure of said deed of trust in the District Court of the Eighth Judicial District [22] of the State of Montana, in and for the county of Teton, in which said county of Teton the said property described in said deed of trust is situated, the same being the proper place for the foreclosure of said mortgage. That the said Conrad City Water Company had defaulted in the payment of interest upon said bonds secured by the said deed of trust, and under and by virtue of the terms of said deed of trust the whole of the principal and interest then became due and payable.

8. That the District Court of the Eighth Judicial District of the State of Montana, in and for the county of Teton, being a court of competent jurisdiction, and the proper and only place for the foreclosure of said mortgage, having jurisdiction of the subject matter and the parties defendant, including

the complainant, did heretofore, by virtue of the deed of trust, and under the statutes of the State of Montana, duly and regularly appoint the defendant, James T. Stanford, Receiver of the Conrad City Water Company, and the said defendant, James T. Stanford, as said receiver, is now in the possession and entitled to the possession of all and singular the property, rights and franchises of the defendant, Conrad City Water Company, and that said action is now pending and undetermined; that in the aforesaid action for the foreclosure of the trust deed so commenced in the said county of Teton, where said property is situated, and in which said action the complainant, the Pacific Coast Pipe Company, is a party defendant, the validity of said bonds and the trust deed can and will be fully and completely determined and tested.

9. Admit that W. G. Conrad was a stockholder and officer in some of the corporations that advanced money to the Conrad City Water Company, but was not a stockholder, and never had any interest in this answering defendant, the Conrad Mercantile Company, and allege the fact to be that the said [23] W. G. Conrad was only one member of the Board of Directors of said corporation that advanced money to the Conrad City Water Company, and that each of said corporations were controlled by its Board of Directors.

10. Deny that the moneys so advanced by the aforesaid corporations were advanced to the said Ben Hager at the direction or upon the credit of the said W. G. Conrad, and deny that the moneys so ad-



vanced formed the consideration for the issuance to the said Ben Hager of the shares of stock of the said Conrad City Water Company, but allege the fact to be that the said moneys so advanced were advanced upon the faith and credit of the Conrad City Water Company and its property, franchises and rights.

11. Deny that the said Ben Hager was in the employ of the said W. G. Conrad, or as such employee took possession of the plant of the Conrad City Water Company or appropriated the same as such. Deny that on the 18th day of April, 1911, or at any other time or at all, Ben Hager, under the direction or control of W. G. Conrad, caused any resolution of the Board of Directors to be passed, but allege the facts to be that the resolutions so passed were duly and regularly passed by the Board of Directors of the Conrad City Water Company for the execution of the notes in the amounts and to the parties above named and secured by the aforesaid bonds and deed of trust.

12. Deny that the moneys advanced to the Conrad City Water Company by Conrad Brothers, Conrad Townsite Company, Pondera Valley State Bank and W. G. Conrad, as hereinabove set out, were already represented by notes heretofore executed and delivered to the said Ben Hager.

13. Deny that the Conrad City Water Company was not on the 18th day of April, 1911, indebted to Conrad Brothers, Conrad Townsite Company, Pondera Valley State Bank [24] and W. G. Conrad in the amounts above set out, and deny that the notes thus executed were evidence of the moneys

which had theretofore been advanced through the medium of the several organizations by the said W. G. Conrad, as alleged in the bill of complaint.

14. Deny that the said Ben Hager or the said W. G. Conrad knew, on the 18th day of April, 1911, or at any other time or at all, or the time of the issuance of the aforesaid notes, that the claim of the complainant was a valid, outstanding obligation of the Conrad City Water Company or evidenced by the promissory note sued on, and deny that any transactions of the Conrad City Water Company were fictitious or void as against the claim of the complainant, or were made or had by the said Ben Hager or W. G. Conrad for the purpose of hindering or delaying the complainant in the collection of its claims.

15. Deny that the complainant at the time it delivered the supplies to the Water Company, or at the time it accepted any note therefor, had no knowledge or notice of the issuance by the Conrad City Water Company of the promissory notes or of the delivery of said bonds and the trust deed therefor, and allege the fact to be that said trust deed was duly and regularly recorded in the office of the county clerk and recorder of Teton County, Montana, on the 14th day of December, 1910, in Book 4B, at page 148, which was long prior to the execution and delivery of the note sued upon by complainant. That by reason of the recording of said mortgage the complainant had notice and was charged with notice of the record thereof and all therein contained.

16. Admit that the issuance of bonds aggregating \$80,000, secured by the aforesaid trust deed, came

into the possession of the parties to whom they were so pledged, [25] as above set forth, and that these answering defendants, excepting the Conrad Mercantile Company and Conrad Banking Company are now asserting claim to the same as an indebtedness to the Conrad City Water Company, which is prior and paramount to any indebtedness of the complainant, and that the right, title and interest of the aforesaid parties were acquired in and to the said bonds and trust deed in the manner as above set out.

17. Deny that the said trust deed and the said issuance of bonds is fraudulent or void as to claim of the complainant under the judgment referred to in the bill of complaint, or in any other manner or at all, but that the same are valid, legitimate, outstanding obligations of the Conrad City Water Company so secured by the trust deed, all of which are prior, paramount and superior to any claim of the complainant.

18. Deny that these answering defendants, or either of them, are using the stock of the Conrad City Water Company to dictate the management of the same.

19. Deny that the officers of the Conrad City Water Company have abandoned their functions or turned the affairs of the company over to the management of the officers of the parties mentioned in the bill of complaint.

20. Deny that the capital stock of this answering defendant, Conrad Mercantile Company, is owned by the Conrad interests.

21. Admit that this answering defendant, the Con-

rad Mercantile Company, commenced an action in the District Court of the Eighth Judicial District of the State of Montana, in and for the county of Teton, against the Conrad City Water Company, to foreclose the valid, subsisting and legitimate mechanic's lien; that the said lien was not a pretended lien; said case being No. 1407 on the files of said court.

22. That the aforesaid suit was commenced in the [26] District Court of the Eighth Judicial District of the State of Montana, in and for the county of Teton, on the 16th day of March, 1915, and prior to the commencement of this action or the filing of this bill of complaint by the complainant. That said District Court of Teton County, having full and complete jurisdiction of the subject matter and of the defendant, Conrad City Water Company, and all of its property, rights and franchises, assumed jurisdiction of said action and now has, and still maintains, jurisdiction thereof. That summons was duly issued in said action and duly served upon the Conrad City Water Company, and the said Conrad City Water Company appeared in said action. That said complainant, in addition to praying for a foreclosure of said lien, alleged and set forth that the Conrad City Water Company was a public service corporation, engaged in furnishing water supply for the city of Conrad, a municipal corporation, and various taxpayers of said city and Teton County residing therein, each of whom must receive water from the mains of said Conrad City Water Company in order to protect their property and prevent it from loss and destruction by fire, and that said defendant



corporation, Conrad City Water Company, was financially unable to continue operating its said plant, or even to maintain the same and protect it from depreciation or being materially injured, and that the appointment of a receiver for said Conrad City Water Company forthwith was an imperative necessity. That said Conrad City Water Company was then insolvent and had admitted that the appointment of a receiver for its affairs was for the best interests of all parties concerned, and that the property subject to the lien of the Conrad Mercantile Company was then in imminent danger of being lost, materially injured, depreciated in value and rendered valueless to the Conrad Mercantile Company and all parties interested in the affairs of the Conrad City Water Company unless the receiver was forthwith appointed. [27] That thereupon and thereafter such proceedings were had and taken before said Court in said cause No. 1407; that on March 16th, 1915, an order was duly given, rendered and made by said District Court of the Eighth Judicial District of the State of Montana, in and for the county of Teton, wherein and whereby James T. Stanford was duly appointed receiver of all and singular the real and personal property and assets of the Conrad City Water Company, a copy of which order is hereto attached, and made a part hereof and marked Exhibit "A." That the said James T. Stanford thereupon duly qualified as such receiver by subscribing and filing in said court and cause his oath of office and also filing his official bonds, duly signed by good and sufficient sureties and approved by said court

in all respects as directed by said order marked Exhibit "A," and the said James T. Stanford entered upon the discharge of his duties as such receiver and took possession of all the property and assets of the Conrad City Water Company as receiver and officer of said court for the benefit of all parties interested in the affairs of said Conrad City Water Company, including this complainant.

23. That at all times since so qualifying as receiver of said Conrad City Water Company on March 16th, 1915, and taking possession of the assets of the Conrad City Water Company, the said James T. Stanford has continued to act as such receiver and to administer the affairs of said corporation as an officer of said court.

24. Deny that the District Court of the Eighth Judicial District of the State of Montana, in and for the County of Teton, had no jurisdiction to appoint the said receiver, and deny that the complaint in said action did not set forth facts sufficient to confer jurisdiction upon the said court, and deny that the receivership was a part or parcel of a scheme entered into by the defendant, James T. Stanford, [28] or other officer of the defendant companies to obtain control of the affairs of the Conrad City Water Company, or with the intent to hinder or delay the complainant in satisfying its judgment out of the assets or property of the Conrad City Water Company.

25. Admit that the Conrad Trust and Savings Bank claims to own an interest in the issue of bonds secured by the trust deed by reason of certain moneys paid, laid out and advanced and loaned to

the Conrad City Water Company, as evidenced by the promissory note of said Water Company, and that the defendant, Paris B. Bartley, Trustee, was acting as such and representing this answering defendant, the Conrad Trust and Savings Bank, in the purchase of said bonds at pledgee's sale as well as 99,980 shares of the capital stock of said Water Company, and that the claim of this answering defendant, Conrad Trust and Savings Bank, by virtue of the pledge of said stock so secured by the trust deed and the sale thereof, has a prior and paramount claim to that of the complainant, and that the said Conrad Trust and Savings Bank acquired said security in good faith and for money actually advanced and loaned to the Conrad City Water Company.

26. These answering defendants deny that any of said issue of bonds of the Conrad City Water Company, secured by said trust deed to the Pondera Valley State Bank as Trustee, ever came into the possession or under the control of the defendant, Conrad Banking Company. Deny that the Conrad Banking Company is now asserting, or ever or at all asserted, any claim to any of said bonds or any interest therein, and allege the fact to be that the Conrad Banking Company never had any business dealings, relation or transaction whatever with the Conrad City Water Company, and never at any time or at all, made any claim to or upon any part or portion of the property or assets of said Conrad City Water Company, or any [29] shares of stock, bonds or other evidence of indebtedness issued

by and for the use or benefit of said Conrad City Water Company, and said Conrad Banking Company never had any interest whatsoever in any of the matters and things set out in complainant's bill of complaint, and accordingly is not now, and never was, a proper party defendant or a party in anywise interested in this cause, and said Conrad Banking Company has been improperly joined in said bill of complaint.

27. Admit that the complainant issued a writ of execution out of this court and cause a notice of garnishment to be served upon the defendant, James T. Stanford, as receiver, but deny that the execution has been returned *nulla bona*, prior to the filing of this bill of complaint, or that the return thereon shows that there is no property, rights or franchises of the Conrad City Water Company out of which the judgment of the complainant can be satisfied. These answering defendants further allege the fact to be that the complainant has failed, neglected and refused to levy its writ of execution upon its judgment upon the property, rights and franchises of the Conrad City Water Company and to sell, or offer to sell, or advertise the same for sale, or in any other way than as stated to enforce its judgment, and deny that the complainant has no adequate remedy at law.

28. That heretofore this defendant, Pondera Valley State Bank, duly commenced its certain action in the District Court of the Eighth Judicial District of the State of Montana, in and for the County of Teton, the same being Cause No. 1486, on



files of said court, wherein the Pondera Valley State Bank, as Trustee, is named as plaintiff, Conrad City Water Company, Conrad Mercantile Company and the complaint, Pacific Coast Pipe Company are named as defendants, for the purpose of foreclosing that certain deed of trust executed August 26, 1910, and recorded in Book 4B, page 148, and thereupon summons was duly issued out of and under the [30] seal of said court in said action No. 1486, and duly served upon the defendant, Conrad City Water Company. That said Conrad City Water Company duly appeared in said action and thereupon and thereafter such proceedings were had and taken before said Court in said cause No. 1486. That on June 23, 1915, an order was duly given, rendered and made by said District Court in said cause wherein and whereby the appointment of a receiver of the Conrad City Water Company made by said Court on March 16th, 1915, in said Cause No. 1407, on the files of said last mentioned court, was extended to said Cause No. 1486, and the said James T. Stanford was designated and appointed as receiver of all and singular the property, real, personal and all equitable interests, contracts, things in action, effects, moneys, receipts, earnings, rights, privileges, franchises and immunities, wheresoever situate, held or possessed by this defendant, Conrad City Water Company, a copy of which last mentioned order is hereto annexed, made a part hereof and marked Exhibit "B." That the said James T. Stanford has duly complied with all the terms and conditions of said last mentioned order.

29. That thereafter, on June 23, 1915, the said Pondera Valley State Bank, after leave of Court first had and obtained from the District Court of the Eighth Judicial District of the State of Montana, in and for the County of Teton, duly filed in said Cause No. 1407, on the files of said last mentioned court, its complaint in intervention, claiming a lien upon all the assets and property of this answering defendant prior and superior to the lien of the Conrad Mercantile Company by virtue of the aforesaid mortgage or deed of trust, and thereupon and thereafter such proceedings were had and taken in said Cause No. 1407; that on June 23, 1915, by an order duly given, rendered and made in said last mentioned cause, the aforesaid appointment of James [31] T. Stanford as receiver of the property, assets and effects of this answering defendant was extended to Cause No. 1486, on the files of said court, a copy of which last-mentioned order is hereto annexed, made a part hereof and marked Exhibit "C."

30. Defendants allege that under and by virtue of the aforesaid orders the District Court of the Eighth Judicial District of the State of Montana, in and for the county of Teton, has acquired possession and full, complete and exclusive jurisdiction of all the affairs and assets of the Conrad City Water Company, an insolvent public service corporation, and that in said court and cause Nos. 1407 and 1486 said complainant is now afforded, and at all times since the institution of said actions, has been afforded, an ample and complete opportunity to assert and protect any and all right or lien which com-

plainant may have upon any of the assets of the Conrad City Water Company.

31. Defendants further allege that this action should abate for the reason that complainant has instituted this cause without presenting its alleged claim to the receiver of the Conrad City Water Company, or the Court having jurisdiction of the affairs of the Conrad City Water Company, and without making any application to the District Court of the Eighth Judicial District of the State of Montana, in and for the County of Teton, for permission to institute or file this bill in equity, or to maintain any proceedings against the Conrad City Water Company or its receiver, and by reason thereof complainant is estopped to maintain this action.

32. Defendants deny each and every allegation in said bill of complaint not herein specifically admitted or denied.

WHEREFORE, these answering defendants pray that the complainant's bill of complaint be dismissed, and that the [32] complainant take nothing thereunder, and that these answering defendants go hence without *day* with their just costs in this behalf incurred.

CONRAD CITY WATER CO.,

By M. S. DARLING,

President.

PONDERA VALLEY STATE BANK,

CONRAD TRUST & SAVINGS BANK,

CONRAD MERCANTILE COMPANY and

PARIS B. BARTLEY, Trustee,

By O. W. McCONNELL,

Their Solicitor.

CONRAD CITY WATER COMPANY and  
CONRAD BANKING COMPANY,By J. A. McDONOUGH,  
Their Solicitor.

O. W. McCONNELL,

Solicitor for Pondera Valley State Bank, Conrad  
Trust and Savings Bank, Conrad Mercantile  
Company, and Paris B. Bartley, Trustee.

J. A. McDONOUGH,

Solicitor for Conrad City Water Company and Con-  
rad Banking Company.Service of the foregoing answer and receipt of  
copy accepted this 26th day of June, 1915.

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Solicitors for Complainant, [33]

State of Montana,

County of Lewis and Clerk,—ss.

M. S. Darling, being first duly sworn according to law, deposes and says: That he is president of the Conrad City Water Company, a Montana corporation, named as one of the defendants in the above-entitled action, and as such is well acquainted with its business and affairs; that he has read the foregoing answer and knows the contents thereof and that the same is true to the knowledge of deponent.

M. S. DARLING,

Subscribed and sworn to before me this 26th day of June, 1915.

[Notarial Seal]

O. W. McCONNELL,  
Notary Public for the State of Montana, Residing at  
Helena, Montana.

My commission expires August 14, 1915. [34].

**Exhibit "A"—Order Appointing Receiver in Conrad  
Mercantile Co. v. Conrad City Water Co.**

*In the District Court of the Eighth Judicial District  
of the State of Montana, in and for the County  
of Teton.*

CONRAD MERCANTILE COMPANY, a Cor-  
poration,

Plaintiff,

vs.

CONRAD CITY WATER COMPANY, a Corpora-  
tion,

Defendant.

The plaintiff in the above-entitled action having filed its duly verified Complaint herein with the clerk of this court wherein plaintiff applied to the Court for the Appointment of a Receiver of the Property and Assets of the defendant corporation, the defendant corporation having been served with process and having entered its appearance herein, the Court having examined said verified complaint and also having examined the plaintiff under oath, it appears to the Court and the Court finds that an appearance has been entered in behalf of said company that plaintiff claims a valid subsisting lien upon all the assets and property of defendant corporation; that said corporation is insolvent and has admitted that plaintiff is entitled to have a Receiver appointed upon the testimony produced before this Court and that the appointment of a Receiver is for the best interests of all parties concerned that the



property subject to plaintiff's lien is in imminent danger of being lost, materially injured, depreciated in value and rendered practically [35] valueless to plaintiff and all parties interested in the affairs of said corporation unless a Receiver is forthwith appointed. That defendant is a public service corporation engaged in furnishing water supply for the City of Conrad, a municipal corporation and various tax payers of said city and Teton County residing therein, each of whom must receive water from the mains of said corporation in order to protect their property and prevent its great loss and destruction and that said defendant corporation is financially unable to continue operating its said water plant or even to maintain the same or protect it from depreciating or being materially injured, and that the appointment of a receiver for said corporation forthwith is an imperative necessity, the Court finding that all the allegations of plaintiff's verified complaint are sustained by evidence produced before said Court all and singular the law and the premises being by the Court fully understood and duly considered, IT IS HEREBY ORDERED, That, James T. Stanford, be and he is hereby appointed receiver of this court of all and singular the property, real, personal and all equitable interests, contracts, effects, moneys, receipts, earnings, rights, privileges, franchises and immunities of said defendant corporation, wheresoever situate and the Court hereby ORDERS, EMPOWERS AND DIRECTS that said receiver to take charge of said property and the income thereof as the officer of this court and to

have, hold and manage the same as such receiver and under the orders and directions of this Court for the benefit of plaintiff as well as the other shareholders and creditors of said corporation.

That said receiver is hereby authorized and directed to take immediate possession of all and singular the said property and assets of defendant corporation wheresoever found or situate [36] and subject to the orders and directions of this Court, to continue and conduct systematically the business and operations heretofore conducted by defendant and particularly to preserve, maintain and operate the waterworks and water supply system of said defendant and to that end to do any and all such repair and construction work as may be reasonably necessary to preserve, complete and continue the operation of said waterworks and water service system of the defendant.

The defendant and each of its officers, directors, agents, engineers, engineering forces and employees are hereby required and commanded forthwith to turn over and deliver to said receiver or his duly constituted representative all of the said property and all books of account, vouchers, papers, deeds, contracts, bills, notes, accounts, moneys and other property of the defendant and they are commanded and required to obey and conform to such orders as may be given from time to time by said receiver or his duly constituted representative in thus preserving, maintaining, completing and operating the said water service system and works of the defendant.

IT IS FURTHER ORDERED that the said re-

ceiver be and he is hereby required and directed pursuant to the provisions of Section 6702 of the Revised Codes of Montana, to forthwith duly file in this Court after approval a bond or undertaking in the sum of Ten Thousand (\$10,000.00) Dollars to the State of Montana and Conrad City Water Company, conditioned upon the faithful discharge of his duties as receiver in this action and further conditioned upon his obeying the orders of the Court herein, and IT IS FURTHER ORDERED that in addition to the aforesaid bond said receiver within ten days from this date shall execute an additional bond to be approved by this Court in the sum of Fifty Thousand (\$50,000.00) [37] Dollars.

ORDER, made and entered in open court this 16th day of March, 1915.

H. H. EWING,  
Judge. [38]

**Exhibit "B"—Order Appointing Receiver in Pondera Valley State Bank v. Conrad City Water Co. et al.**

*In the District Court of the Eighth Judicial District of the State of Montana, in and for the County of Teton.*

PONDERA VALLEY STATE BANK, a Corporation,  
as Trustee,

Plaintiff,

vs.

CONRAD CITY WATER COMPANY, a Corporation,  
CONRAD MERCANTILE COMPANY, a Corporation,  
PACIFIC COAST PIPE COMPANY, a Corporation,

Defendants.

Upon reading and filing the verified Complaint in this cause, the defendant corporation, Conrad City Water Company, having been served with process and having entered its appearance herein and having by its verified appearance admitted and confessed that plaintiff corporation has a valid first mortgage lien upon the property of defendant corporation as set forth in its Complaint on file herein that the condition of said mortgage or deed of trust creating said mortgage lien has not been performed and that the property is insufficient to discharge said mortgage debt and the defendant corporation having also admitted that the appointment of a receiver is necessary to protect the lien of plaintiff and serve the best interests of all parties concerned in the affairs of said corporation both as shareholders, bondholders and general creditors, and the Court finding from the testimony produced, that it is for the best interests of all [39] parties concerned that the property and affairs of Conrad City Water Company be in the hands of a receiver and that the property subject to plaintiff's lien is in imminent danger of being lost, materially depreciated in value and rendered practically valueless to plaintiff and all parties interested in the affairs of Conrad City Water Company unless said affairs are intrusted to a receiver. That defendant is a public service corporation engaged in furnishing water supply for the City of Conrad, a municipal corporation, and various tax payers of said city and Teton County residing therein, each of whom must receive water from the mains of said corporation in order



to protect their property and prevent its great loss and destruction and that said defendant corporation is financially unable to continue operating its said water plant or even to maintain the same or protect it from depreciating or being materially injured unless the affairs of said corporation are administered by a receiver of this court and that the administration of the affairs of Conrad City Water Company by a receiver is an imperative necessity, the Court finding that all the allegations of plaintiff's verified complaint are sustained by evidence produced before said Court all and singular the law and the premises being by the Court fully understood and duly considered, IT IS HEREBY ORDERED that the appointment of the receiver of Conrad City Water Company heretofore made by this court on March 16th, 1915, in the cause wherein Conrad Mercantile Company is plaintiff, and Conrad City Water Company, defendant, No. 1407 on the files of this court, is hereby extended to this present case and IT IS HEREBY ORDERED that James T. Stanford be and he is hereby appointed receiver of this court of all and singular the property real, personal and all equitable interests, contracts, things in action, effects, moneys, receipts, earnings, rights, [40] privileges, franchises and immunities, where-soever situated, held or possessed by the defendant, Conrad City Water Company, described in the complaint herein as subject to that certain mortgage or deed of trust dated August 26th, 1910, made by defendant Conrad City Water Company to plaintiff as trustee for the foreclosure of which this suit is



brought, TO HAVE AND TO HOLD, the same as the officer of this court and under the order and direction of this Court, and the Court hereby ORDERS, EMPOWERS AND DIRECTS the said receiver to take charge of said property and the income thereof as the officer of this Court and TO HAVE, HOLD AND MANAGE, the same as such receiver and under the orders and directions of this Court for the benefit of plaintiff as well as the other shareholders and creditors of said corporation.

That said receiver is hereby authorized and directed to take immediate possession of all and singular the said property and assets of defendant corporation wheresoever found or situated and subject to the orders and directions of this Court, to continue and conduct systematically the business and operations heretofore conducted by Conrad City Water Company and particularly to preserve, maintain and operate the waterworks and water supply system of said defendant and to that end to do any and all such repair and construction work as may be reasonably necessary to preserve, complete and continue the operation of said waterworks and water service system of said Conrad City Water Company.

The defendant, Conrad City Water Company and each of its officers, directors, agents, engineers, engineering forces and employees are hereby required and commanded forthwith to turn over and deliver to said receiver or his duly constituted representative all of the said property and all books of account, [41] vouchers, papers, deeds, contracts, bills, notes, accounts, moneys and other property of the defend-

ant subject to the lien of said mortgage, in its or their hands or under its or their control and they are commanded and required to obey and conform to such orders as may be given from time to time by said receiver or his duly constituted representative in thus preserving, maintaining, completing and operating the said water service system and works of the defendant, and in conducting its said operations and business, and all other persons and corporations whomsoever are hereby enjoined from interfering in any manner whatsoever with the possession, conduct or management of any part of the business or properties over which said receiver is so appointed, or from in any way preventing or seeking to prevent the discharge of such receiver of his duties in the operation of the properties and business hereby committed to his charge.

The defendant and all of its creditors, and all other persons or corporations whomsoever, are hereby enjoined and prohibited from interfering with or intermeddling with, incumbering, transferring or disposing of any of the said properties in any way, except to transfer, convey and turn over the same to said receiver.

The said receiver is hereby invested with full power, at his discretion, to employ and discharge, and fix and pay the compensation of all such counsel, managers, agents and employees, as may be required for the proper discharge of the duties of his trust, and to pay all current expenses incident to the creation or administration of this trust, and to the operation of the properties and business hereby entrusted to him.

That said receiver is hereby fully authorized to collect by suit or otherwise, and receive all income from the said properties, and all debts due to the defendant, of every [42] kind, and to institute and prosecute all such suits as he may determine necessary to recover and preserve the property and trust hereby vested in, and to defend all actions instituted against him as such receiver, and to appear in and conduct the prosecution of defense of any suits against the defendant, and to employ counsel for such purposes.

The said receiver is hereby authorized and directed out of the moneys coming into his hands to pay and discharge all wages due to employees upon the current pay-roll.

IT IS FURTHER ORDERED, that the said receiver be and he is hereby required and directed pursuant to the provisions of Section 6702 of the Revised Codes of Montana, to forthwith duly file in this court, after approval, a bond or undertaking in the sum of Ten Thousand (\$10,000.00) Dollars to the State of Montana, and Conrad City Water Company conditioned upon the faithful discharge of his duties as receiver in this action and further conditioned upon his obeying the orders of the court herein, and IT IS FURTHER ORDERED, that in addition to the aforesaid bond said receiver within ten days from this date shall execute an additional bond to be approved by this court in the sum of Thirty Thousand (\$30,000.00) Dollars.

ORDER, made and entered in open court this 23d day of June, 1915.

H. H. EWING.

Judge. [43]

**Exhibit "C"—Order Appointing Receiver in Conrad Mercantile Co. v. Pondera Valley State Bank, etc.**

*In the District Court of the Eighth Judicial District of the State of Montana, in and for the County of Teton.*

CONRAD MERCANTILE COMPANY, a Corporation,

Plaintiff,

vs.

PONDERA VALLEY STATE BANK, Trustee,  
Intervenor; CONRAD CITY WATER COMPANY, a Corporation,

Defendants.

Upon reading and filing the Complaint in Intervention filed in the above-entitled action, upon Motion of Counsel for Pondera Valley State Bank, and the Court finding from the testimony produced that it is for the best interests of all parties concerned that the property and affairs of Conrad City Water Company be in the hands of a receiver, and that Conrad City Water Company is insolvent and financially unable to continue operating its said water plant or even to maintain the same or protect it from depreciating or being materially injured unless the affairs of said corporation are administered by a

receiver of this Court and that the administration of the affairs of Conrad City Water Company by a receiver is an imperative necessity, and the Court finding that all the allegations of said complaint in intervention are sustained by evidence produced before said Court and the Court finding further that said Pondera Valley State Bank, as trustee, has instituted an action against the said Conrad City [44] Water Company et al., known and numbered as Case No. 1486 on the files of this court, seeking to foreclose that certain mortgage or Deed of Trust heretofore executed by Conrad City Water Company to said Pondera Valley State Bank and praying for the appointment of a receiver in said last-mentioned action and all and singular the law and the premises being by the Court fully understood and duly considered;

IT IS HEREBY ORDERED, that the appointment of a receiver of the Conrad City Water Company heretofore made by this court on March 16th, 1915, in the above-entitled action be and the same is hereby extended to that certain action known as No. 1486, on the files of this court wherein Pondera Valley State Bank, as Trustee, a corporation, is named as plaintiff, and Conrad City Water Company, a corporation, Conrad Mercantile Company, a corporation, and Pacific Coast Pipe Company, a corporation, are named as defendants.

ORDER, made and entered in open court this 23d day of June, 1915,

H. H. EWING,  
Judge.



Filed June 26, 1915. Geo. W. Sproule, Clerk.  
[45]

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Thereafter, on August 25, 1915, the Answer of defendant James T. Stanford, receiver of Conrad City Water Company, was duly filed herein, which Answer is omitted in this transcript pursuant to the direction contained in appellant's praecipe for transcript filed herein and a copy of which is hereinafter set forth. [46]

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Thereafter, on November 1, 1916, Decree was duly filed and entered herein, being in the words and figures following, to wit:

[Title of Court and Cause.]

#### **Decree.**

This cause came on regularly for trial on the 24th day of April, 1916, before the Hon. Geo. M. Bourquin, District Judge, presiding; Day & Mapes, Esqs., appearing as counsel for the complainant, and O. W. McConnell and J. A. McDonough, Esqs., appearing as counsel for defendants. Whereupon witnesses were sworn and examined on the part of the complainant and on the part of the defendants, and the evidence being closed, the cause was submitted to the Court for consideration and decision, and, after due deliberation thereon, the Court finds that it is without jurisdiction in this case and orders a decree entered in favor of the defendants.

Wherefore, by reason of the law and the finding aforesaid, it is ORDERED, ADJUDGED and DE-

CREED that the [47] complainant's bill of complaint be dismissed; that it take nothing thereby, and that the defendants recover of and from the complainant their costs and disbursements taxed at the sum of \$111.50.

Signed and rendered this 1st day of Nov., 1916.

BOURQUIN,  
District Judge.

Filed and entered Nov. 1, 1916. Geo. W. Sproule,  
Clerk. [48]

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Thereafter, on the 24th day of January, 1917, the Statement of the Evidence and Proceedings in said cause was duly approved and filed, being in the words and figures following, to wit: [49]  
(Title of Court and Cause.)

### **Statement of Case.**

BE IT REMEMBERED, that this case came on regularly for hearing before the Hon. GEORGE M. BOURQUIN, Judge of the District Court of the United States, District of Montana, the plaintiff appearing by its attorneys, Messrs. Day & Mapes, and the defendants by their attorneys, Messrs. O. W. McConnell and J. A. McDonough.

Thereupon the following proceedings were had:

The plaintiff called MARK S. DARLING, who being first duly sworn, testified on direct examination, as follows:

### **Testimony of Mark S. Darling, for Plaintiff.**

"I reside at Conrad, Montana, and resided there during the years 1910, 1911, 1912. I was secretary

(Testimony of Mark S. Darling.)

of the corporation known as the Conrad City Water Company, and have in my possession the minute-books of the company. The company was incorporated in August, 1910, by Ben Hager, George H. Stanton, and M. S. Darling, myself, with a capital stock of \$100,000, to engage in the business of supplying water to the town of Conrad. A plant for that purpose had been constructed at that time by Ben Hager, one of the incorporators. The meeting for the organization of the company was held August 26th, 1910, at [50] which were present Ben Hager, M. S. Darling and George H. Stanton, the directors appointed in the articles of incorporation. There had been twenty shares subscribed by M. S. Darling and George H. Stanton, at the time the articles were filed. At the meeting of the incorporators, Ben Hager, M. S. Darling and M. B. Hager were elected directors, and upon the organization of the board M. B. Hager was elected President, Ben Hager, Vice-President, and M. S. Darling, Secretary and Treasurer. M. B. Hager was the son of Ben Hager. At the meeting held on the same day at four o'clock P. M., the directors were all present, and the following resolution was passed with reference to the acquisition of property by the company:

(Reading from Page 8 of the Minute-Book, Plaintiff's Exhibit "A.")

**Plaintiff's Exhibit "A"—Excerpts from Minute-book of Conrad City Water Co.**

"The proposition was then made to the meeting by Ben Hager to sell to this Company the franchise

under which the said system of waterworks was built, together with all reservoirs, reservoir sites, pipe lines, easements, right of way, contract rights, machinery, equipment and all property of whatsoever kind or character owned and used by him in connection with the waterworks system recently built and put in operation for use in the town of Conrad, Teton County, Montana, in consideration of the issuance and delivery to him, as full paid, 99,980 shares of the capital stock of this company, and the sum of Seventy Thousand Dollars (\$70,000), to be evidenced by the promissory note of the company, and secured by its first mortgage six per cent, gold bonds, hereafter to be issued. It appearing to the stockholders that the property and rights so to be acquired are reasonably worth the price at which the same are offered, the following resolution was duly submitted, and upon motion, was unanimously adopted by the vote of stockholders representing and holding all the capital stock of this company [51] subscribed for, issued or outstanding, to wit:

“BE IT RESOLVED, by the stockholders of Conrad City Water Company that the proper officers of this company, by and with the consent and authorization of the Board of Directors be, and they are hereby, directed and empowered to purchase and receive from Ben Hager the system of waterworks in the town of Conrad, Teton County, Montana, including all contract rights, reservoir sites, reservoirs, pipelines, easements, rights of way, machinery and equipment, and all property owned and used by him in the conduct of the business of said waterworks system,

including the franchise granted by the town of Conrad for the construction and operation of such system of waterworks, and that the same be paid for by the issuance and delivery to him, as full paid, 99,980 shares of the stock of this company, and also the promissory note of this company for the sum of Seventy Thousand Dollars (\$70,000) to be made for such period of time, and at such rate of interest as the said officers may agree upon, and such note to be secured by eighty Thousand Dollars (\$80,000) face value of the first mortgage, six per cent, gold bonds of this company, hereafter to be issued and negotiated for the corporate purposes of the company. And the said officers, by and with the consent and authorization of the Board of Directors, are hereby directed and empowered in the name, under the seal, and on behalf of this corporation to perform any and all acts, and execute all papers which are or may be necessary or proper to fully carry out and complete the purchase of said property for the consideration aforesaid; and authority is hereby conferred upon said officers, in the exercise of their judgment and discretion, to determine the legality and sufficiency of all instruments in writing transferring to this company the property and rights aforesaid; and in determining and agreeing upon the time of maturity and rate of interest of the promissory note, so [52] to be given, and the form of the bonds and coupons, and of the provisions, stipulations and conditions to be contained in the deed of trust, hereafter to be executed, to secure said bonds."

Ben Hager, who was present at that meeting as a



stockholder, was the same who made the proposition, and M. B. Hager was his son. The notes described in the resolution were never delivered to Hager, but the issue of bonds were. The mortgage trust deed therein described was executed and delivered to the Pondera Valley State Bank, the trustee named therein. Whereupon the trust deed was identified as Exhibit "B," and offered in evidence, but its contents are not material to this appeal.

There was no \$70,000 note delivered to Hager, but notes representing the indebtedness referred to in the resolution were given to the different interests who had put up money for the construction of the plant. The notes, with interest, on the 18th day of April, 1911, amounted to the sum of \$68,474. The Conrad City Water Company, at the date of its resolution, was not indebted to Hager in any sum except as represented by these notes. At that time the bonds were delivered to Mr. Hager, and then to Mr. Conrad, to secure the payment of these notes, but no resolution to that effect was put upon the minutes of the company. A resolution was passed on the 18th day of April, 1911. Thereupon the notes were marked Plaintiff's Exhibits "C," "D," "F" and "G," and introduced in evidence. Exhibit "C" was a note dated April 18th, 1911, for \$13,930, payable to the order of the Conrad Townsite Company. Exhibit "D" was a note dated April 18th, 1911, for \$48,275, payable to the order of Conrad Brothers. Exhibit "F" was a note dated April 18th, 1911, for \$850.00, payable to W. G. Conrad. Exhibit "G" was a note dated April 18th, 1911, for \$5,419.00, payable to the

order of the Pondera Valley State Bank. All the notes were payable 180 days after date, at the Conrad Trust and Savings Bank, Helena, Montana, bearing [53] interest at the rate of eight per cent from date, and attached to each was a collateral agreement described the collateral attached as \$80,000 par value of the bonds of the Conrad City Water Company; one hundred thousand shares of the capital stock of the Conrad City Water Company; 37,997 shares of the Belgrade Water Company's stock, and the note of M. S. Darling for \$10,000.

On the same day and at the same meeting, the following proceedings were had:

(Minute-book, Exhibit "A," page 49.)

"A special meeting of the Directors of the Conrad City Water Company was held on this 18th day of April, 1911. Present, Ben Hager and M. S. Darling. There being a quorum of Directors present, the following resolution was offered:

'WHEREAS, the Conrad City Water Company has issued gold bonds of the Company aggregating \$80,000, secured by first mortgage or deed of trust upon all the property and assets of the company, and

'WHEREAS, the object and purpose of issuing said bonds was to pay for said plant, and

'WHEREAS, the money for the construction of said water works and building of said plant was furnished by the following named persons in the amount set opposite their names:

Conrad Brothers .....	\$48,275.00
Conrad Townsite Company.....	13,930.00
Pondera Valley State Bank.....	5,419.00
W. G. Conrad.....	850.00

‘WHEREAS, it is desired that the sums so advanced by said parties shall be repaid and secured.

‘NOW, THEREFORE, be it resolved, that the Vice-President and Secretary of this company be, and they are hereby, authorized, directed and empowered, to execute the note of the company to the [54] aforesaid parties, for the amount so advanced by each.

‘BE IT FURTHER RESOLVED, that the \$80,000 worth of bonds of said company shall be turned over and delivered as security for each of said notes.’

Upon motion duly made and seconded, the said resolution was unanimously carried and adopted.

The resignation of M. B. Hager as a Director and President of the Company was then presented by Mr. Ben Hager, and upon motion duly made and seconded, same was accepted.”

At this meeting Ben Hager and M. S. Darling were present. The bonds referred to in the resolution is the same issue as described in the trust deed. There had also been deposited as security for this indebtedness the \$100,000 of the capital stock of the company, for which there had not been paid anything, the same having been issued to Ben Hager in exchange for the property of the company which had been transferred by him in accordance with the original resolution. Ben Hager never at any time paid any cash for any of the shares of stock except for the twenty shares that was originally subscribed. The indebtedness to the Conrad Townsite Company was for money advanced by the Conrad Townsite

Company in the construction of the water system, at the request of Mr. W. G. Conrad. The Directors of the Conrad Townsite Company were Harfield Conrad, the son of W. G. Conrad, and M. S. Darling. The note to Conrad Brothers was given for moneys advanced for the construction of the water system, at the request of Mr. W. G. Conrad, and the note to the Pondera Valley State Bank was for moneys advanced. All of these moneys that had been advanced were first asked for by Mr. Hager, and then authorized by Mr. W. G. Conrad, or secured by his endorsement. The plant had been constructed by means of these advances prior to the organization of the company. There was no other meeting of the officers or directors of the [55] corporation from the time it was organized in August, 1910, until April, 1911, and from April 18th, 1911, until the 3d day of January, 1913, at which time a resolution was passed for the sale of a new bond issue, but nothing came of it.

On cross-examination witness testified that Mr. Hager turned over to the Conrad City Water Company in payment for the 99,980 shares of stock which were issued to him, a thirty-year franchise from the City of Conrad, rights of way for pipe-line, office building and site on Main Street, in Conrad, and personally superintended the constructions of the plant. That the company obtained the benefit of Mr. Hager's services, and that he did not receive any salary other than said stock, for the work. The notes represented actual cash advances by the payees, used in the construction of the plant.



(Testimony of Mark S. Darling.)

On redirect examination, witness testified that the advances were all made prior to the organization of the company, to Ben Hager, at the request of W. G. Conrad.

Plaintiff also called Mr. Ben Hager as witness, who, after being first duly sworn, testified as follows:

**Testimony of Ben Hager, for Plaintiff.**

“During the year 1910 I was engaged in building the Conrad Water Company. The plant was started in 1909, and completed in the fall of 1910. I built it for myself and Mr. Conrad, who advanced the money for the construction of the plant as the work proceeded. I did not put into the plant any money of my own. I contributed my services. The advances represented by these notes were obtained from the various concerns. I asked Mr. Conrad whenever money was needed, and it came from the parties mentioned. At the organization of the Company in August, 1910, there was never delivered to me a note for \$70,000, nor was any such note ever executed. I never received any of the shares of stock, although they were made out to me. The issue of bonds were never delivered to me; I think [56] they were delivered to Mr. Conrad, to be sold and the indebtedness paid off out of the proceeds. Failing to sell the bonds by April, 1911, the bonds were then put up as collateral for these advances.”

On cross-examination, witness testified that the money represented by the notes was actually paid out to construct the Conrad City Water Company's plant. All of the money was deposited in the Pon-



(Testimony of Ben Hager.)

dera Valley States Bank, and checked out during the course of construction. The building lot on Main Street in the City of Conrad was paid for by him. He also transferred to the Conrad City Water Company his franchise, rights of way and pipe-lines. He never received any compensation or pay for his efforts in building the plant, except stock. The Conrad City Water Company never issued to him a note for \$70,000. Instead of making the note to him for that amount, they made notes to the companies that actually put up the money to construct the plant.

**Testimony of P. B. Bartley, for Plaintiff.**

Whereupon plaintiff called P. B. BARTLEY. Witness being duly sworn, testified as follows:

“I am the cashier of the Conrad Trust and Savings Bank, a corporation engaged in banking business in Helena, Montana. Mr. W. G. Conrad was one of the organizers of the bank, and for a number of years its president. The issue of bonds described in the trust deed came into my possession in the Fall of 1913, from Mr. Conrad, together with the stock of the company. The bonds and stock were sold under pledgee’s sale, and I was told to bid them in. The sale was conducted by Mr. McConnell, and I bought the bonds at the sale, together with certificates of stock and the note signed by M. S. Darling. I was acting for the creditors. I had no personal interest in the matter whatsoever, and paid nothing for the bonds. The bonds and stock at that time were delivered to Mr. Conrad, and remained in his possession until later in the year, when he [57]

(Testimony of P. B. Bartley.)

turned them over to me to hold as trustee. I have no other connection with this transaction at all."

Whereupon plaintiff offered in evidence Exhibit "H," identified as the Notice of Sale, which described the collateral that was attached to the bond issue. The witness testified that he had the bonds present in court.

On cross-examination witness testified that the sale actually took place at the time and place indicated, and that the property pledged was actually sold and bid in by him and delivered to Mr. Conrad.

### **Testimony of Patrick Kelly, for Plaintiff.**

Thereupon the plaintiff called as witness PATRICK KELLY, who, after being first duly sworn, testified as follows:

"I am the president of the Pondera Valley State Bank; in August, 1910, I was vice-president and cashier. The Pondera Valley State Bank is the trustee of the trust deed introduced in evidence. The trust deed was delivered to the Pondera Valley State Bank, and we had it recorded. We never had in our possession the bonds. We were requested to foreclose the trust deed, but I do not remember the date when the suit was started. Mr. Bartley holds some of the bonds as trustee for us."

On cross-examination the witness testified that the Pondera Valley State Bank had actually advanced the money represented by the note Exhibit "G," which had not been paid, and that the Conrad Townsite Company and Conrad Brothers had also

(Testimony of Patrick Kelly.)

advanced money represented by the notes introduced in evidence, which had not been paid.

Thereupon, as part of the cross-examination, defendants offered in evidence "Exhibit 1," being a certified copy of the Complaint in the District Court of the Eighth Judicial District of the State of Montana, in and for the county of Teton, filed June 23d, 1915, to show that proceedings had been started to foreclose the mortgage. [58]

To this offer the plaintiff objected until it had been shown that the plaintiff in this action had been served with summons and was in reality a party to the suit, and on the further ground that the proceedings were commenced after the commencement of this action, and therefore could not affect the jurisdiction of the Court.

Which objection was by the Court overruled, and exception taken.

Witness continuing testified that James T. Stanton had been appointed receiver, and was in charge of the Conrad City Water Company's plant, and "Exhibit 2" and "Exhibit 3," being certified copies of the appointment of receiver, were offered and read in evidence. These exhibits are not herein inserted, for the reason that they are attached to the answer of the defendant James T. Stanton, and made part of this record.

Thereupon, witness continuing, testified that a suit had been instituted in the District Court of Teton County by the Conrad Mercantile Company against the Conrad City Water Company, in which the Pon-

(Testimony of Patrick Kelly.)

dera Valley State Bank, as trustee, had intervened. This suit was brought prior to the foreclosure suit.

Thereupon the defendants' attorney offered in evidence the original complaint of the Conrad Mercantile Company against the Conrad City Water Company, and also the complaint in intervention of the Pondera Valley State Bank, to which offer the plaintiff objected on the ground that the same was incompetent, irrelevant and immaterial to any of the issues in this action, in that the complaint was filed after the lien of the plaintiff had been secured by the filing of the writ of attachment in this case, which was subsequently ripened into judgment, following the levy of execution, and therefore the jurisdiction of this court over the property of the Conrad City Water Company to enforce the collection of the judgment could not be ousted by any proceedings [59] in the State court. And also for the further reason that the complaint under which the receiver was appointed in the District Court of the Eighth Judicial District did not state facts sufficient to confer on the State Court jurisdiction to appoint a receiver, and oust this court of jurisdiction to enforce its judgment, rendered in the action in which the plaintiff recovered judgment sued on.

Which said objection was by the Court overruled, and exception taken, and thereupon the papers were introduced in evidence as follows:

**Defendant's Exhibit 5—Complaint in Conrad Mercantile Co. v. Conrad City Water Co.**

“[Title of Court and Cause]:

**COMPLAINT.**

**THE PLAINTIFF COMPLAINS AND FOR A CAUSE OF ACTION AGAINST SAID DEFENDANT ALLEGES:**

First. That the plaintiff is now and at all the times hereinafter mentioned and referred to was a corporation organized and existing under and by virtue of the Laws of the State of Montana.

Second. That defendant is now and at all the times hereinafter mentioned and referred to was a corporation organized and existing under and by virtue of the Laws of the State of Montana.

Third. That said defendant corporation now and at all the times hereinafter mentioned and referred to was the owner of a certain franchise known as Ordinance No. 2-A, passed by the Town Council of the said town of Conrad, and approved by the Mayor of said town on the 13th day of November, 1909, being an ordinance or franchise granting to Ben Hager, and to his successors and assigns, for the period of thirty (30) years the right to construct, maintain and operate a gravity and pumping system of water works in said town, and the right to sell water to the said town and to the inhabitants thereof, [60] which franchise, for value, was thereafter duly assigned to said defendant. That under the terms of said franchise it becomes and is necessary for defendant corporation to furnish to



the town of Conrad and its inhabitants a sufficient and dependable supply of water for municipal and domestic use and also as and for fire protection and said defendant corporation accordingly now and at all times hereinafter mentioned and referred to under the terms of said franchise is obliged to furnish to the said town of Conrad and the inhabitants thereof and deliver through its various water mains and water service pipes, a sufficient supply of water for the use of the said town of Conrad in the exercise of its functions as a municipal corporation and also for the use of the property owners and inhabitants of said city. That the pumping plant hereinafter referred to is simply a part of said water works and water service system whereby defendant corporation is enabled to comply with and perform the terms and conditions of its said franchise and *and* distribute and deliver through its water mains at the various points in the town of Conrad, Montana, a necessary quantity of water for the convenience and use of the residents of said city.

Fourth. That the plaintiff during that period of time commencing on the 1st day of September, 1914, and ending on the 10th day of March, 1915, did furnish material and supplies to and for the water works system of said defendants in Teton County, Montana, all of which said material and supplies were furnished, sold and delivered to said defendant corporation at its special instance and request, all of which were used in and about the completion of that certain pumping plant of defendant corporation situate and located in the northwest corner of the

southeast quarter of Section Eighteen (18) Township Twenty-eight (28) North, Range Four (4) West, Montana Meridian, Teton County, Montana, and upon the water works and water system of Conrad City [61] Water Company extending from the said wells and pumping plant situate upon the aforesaid parcel of land to and throughout the town of Conrad, Montana, for the purpose of distributing water through the service pipes of defendant corporation and furnishing water supply to the town of Conrad and to its inhabitants, said improvement consisting of one entire unit or system commonly known as the plant of Conrad City Water Company. That all the materials and supplies thus furnished were used in and upon said improvement and said Conrad City Water Company's plant, and became a material, valuable and permanent part thereof.

Fifth. That the said materials and supplies thus furnished by plaintiff as aforesaid, a more particular and specific description of which is set forth in the statement of account annexed to and made a part of plaintiff's claim of lien hereinafter referred to, were all used in, about, upon and became a permanent part of said pumping plant, water works and water service system of defendant corporation and were necessary for the use, construction and completion of said pumping plant and were and are of the reasonable value of Fifty-four and 70/100 Dollars (\$54.70) which amount the said defendant corporation promised and agreed to pay plaintiff therefor.

Sixth. That plaintiff furnished the last of said material to said defendants on March 10, 1915, and

that said defendant has not paid for said material or any part thereof and the full amount thereof, to wit: Fifty-four and 70/100 Dollars (\$54.70), together with legal interest thereon from March 10th, 1915, still remains due, owing and wholly unpaid, from said defendant to this plaintiff at the time plaintiff filed its certificate of lien as alleged in the succeeding paragraph and at the present time.

Seventh. That plaintiff duly filed as required by law its claim for a lien for the amount due and owing it as aforesaid [62] from said defendant in the office of the Clerk and Recorder of Teton County, Montana, on the 16th day of March, 1915, within ninety days after the completion of the furnishing of said material, which said claim of lien so filed was duly signed and verified by J. C. Price, the President and Manager of the Plaintiff corporation, and contained a just and true account of the amount due plaintiff after allowing all credits and also containing a correct description of the property to be charged with such lien and also the name of the owner of the said property and the person whose interest therein was sought to be charged with said lien, namely, the name of the said defendant, also the date when the last of said material was furnished by this plaintiff to said defendant, and a statement of all other facts relating thereto, a copy of which said claim of lien is hereunto annexed and made a part hereof and marked Exhibit "A" and by said reference made a part of this complaint as fully and effectually to all intents and purposes as if herein set forth *verbatim*.

Eighth. That this plaintiff has been obliged to pay and did pay the sum of Fifty cents for filing said lien.

Ninth. That there is a deed of trust or mortgage on all of the property of defendant corporation heretofore executed on August 26th, 1910, to Pondera Valley State Bank, as Trustee, to secure a bonded indebtedness aggregating Eighty Thousand Dollars (\$80,000) with six per cent interest thereon and that said corporation is indebted to various persons, firms and corporations in the sum of more than \$96,000, and all its property and assets are worth less than \$60,000, and said defendant is now absolutely insolvent and has confessed its inability to care for its said water works and water service system and to continue to operate the same and is without money or means of obtaining or borrowing money with which to continue the operation of its said water service system. [63]

Tenth. That said defendant has absolutely no means or resources from which to pay the said money thus due from it and no property upon which it can give security to raise said money either for the purpose of liquidating its said indebtedness or continue the operation of its said plant. That said defendant is absolutely insolvent and without the funds, means or money with which to continue its operations or to maintain its said waterworks and water service system or any part thereof, or to even care for or preserve said waterworks and water service system or any part thereof. That said water plant must be kept in operation so as to furnish the town



of Conrad and the inhabitants thereof a water supply for municipal and domestic purposes and for fire protection. That in order to do this requires constant care and attention and constant supervision and the expenditure of a considerable amount of money daily in order to pump and supply sufficient water for delivery through the mains of defendant corporation for the benefit of the general public living at and in the vicinity of Conrad, Montana. That the entire value of defendant's plant and water system consists in its being maintained and operated in good condition and repair and that if its operation should cease as an unavoidable result the town of Conrad and the inhabitants thereof will be deprived of water with which to operate or flush its sewer or plumbing system in the various homes, hotels and public buildings there so that great and irreparable loss and injury would result, not only to the defendant corporation but to the public at large. That unless said plant of defendant is thus operated and unless it continues to deliver water under its various contracts with the town of Conrad and the owners of the buildings therein and the inhabitants thereof said water service system will be materially injured and depreciated in value and rendered virtually valueless and this plaintiff will be deprived of the only security [64] upon which it has a lien and the only property and assets upon which it can assert a valid claim for reimbursement of the moneys thus due plaintiff as aforesaid.

Eleventh. That defendant's waterworks and water supply system is valuable only as a going concern because should it suspend operations the plant



itself will be materially injured, depreciated in value and plaintiff's security impaired, rendered valueless and lost to this plaintiff and the very franchise under which defendant operates and which is its principal asset will become subject to forfeiture and revocation by the Town Council of Conrad, and it will be valueless to plaintiff and defendant as well, thereby depriving plaintiff of the property upon which it has a lien for the satisfaction of its aforesaid claim. That unless defendants' said water plant is kept in operation defendant will be *expected* to innumerable suits and claims for damages for the various property owners and inhabitants of the town of Conrad who are absolutely dependent upon defendants said plant for water supply to protect their property against loss and destruction by fire and to protect the health and welfare of themselves and all people residing within or visiting the town of Conrad. That in event of the said defendant corporation even temporarily suspending its operation hundreds of people dependant upon it for water supply will be instantly deprived of water and be irreparably damaged and will sustain great and irreparable loss and great suffering and want and said defendant will become liable to its water users for damage thus caused by suspending its operations of said water system. That defendant is without funds to continue its operations and unless a receiver is appointed forthwith must suspend its operations and the maintenance, care and protection of its assets and property and particularly its water plant and water service system, and unless a receiver is forthwith appointed there will be a multiplicity [65].

of suits and litigation against said defendant and innumerable damage claims which will utterly ruin defendant corporation, waste and squander its assets, and permit the same to be materially injured, dissipated and rendered valueless to this plaintiff and the various other creditors and all parties interested in defendant corporation, so that plaintiff will lose the property upon which it has its aforesaid lien and which property if administered upon by a receiver will ultimately yield sufficient income to pay plaintiff's claim and satisfy a portion of defendants other indebtedness.

That unless a receiver is appointed said property will not yield any revenue or income and plaintiff's claim will become a total loss.

Twelfth. That said defendant is obligated by its aforesaid franchise with the town of Conrad to furnish water to said town and the inhabitants thereof, and all its assets consist of said franchise and said water plant. That there are hundreds of home builders absolutely dependent for water supply to be furnished and now being daily furnished by said defendant, and unless a receiver is appointed the pumping, carrying and delivering of water to said settlers and home builders will be suspended forthwith to their great loss and detriment. That to permit said defendant corporation because of its insolvency to even temporarily suspend the pumping and delivering of water or to fail to furnish or deliver water through its said system or to delay in delivering the water in accordance with the vested right of the home builders and property owners of Conrad and the multitude of inhabitants thereof who

are resident taxpayers within the State of Montana, and to expose their property to loss or destruction by fire because of the failure of defendant to deliver said water, would be a public calamity and would bring almost unending suffering, loss and want upon innocent settlers and home builders. [66] That all this can be avoided by the appointment of a receiver to immediately take charge of the assets and property of the defendant corporation and unless a receiver is forthwith appointed by this Honorable Court the maintenance and operation of defendant's said water plant will cease and be suspended because of defendant's lack of credit and funds and inability to raise funds with which to maintain its said water plant or continue the operation thereof or even to preserve said plant and pipe-lines and water service system from great depreciation, loss and injury.

Thirteenth. That the nature and scope of the corporate purposes for which defendant was formed are such and the object and purpose of its said franchise from the town of Conrad are such, and its innumerable contracts for the delivery of water to the multitude of owners and occupants of property at and in the vicinity of Conrad, Montana, are such that the defendant is a *quasi*-public corporation and its purposes and project are public utilities of an exceedingly high character and accordingly the work of maintaining and operating the said water system and repairing the same and if necessary increasing and enlarging its capacity so as to serve the public at large advantageously are of such vital importance to the State of Montana and its citizens at large as to justify this Honorable Court as recognizing de-

fendant corporation as belonging to that class of public service enterprises for whose preservation on behalf of the general public, the exercise of the highest degree of power by a Court of Equity is justified and required by the public policy of this State as evidenced by its constitution and codes, and that unless a receiver is forthwith appointed, empowered to take immediate charge of defendant corporation and all its assets and administer upon the same and maintain and operate said water service system the same will become a loss to all parties in interest, [67] and will be the cause of loss and suffering to the innocent home builders and settlers dependant upon defendant for water supply, for domestic uses and fire protection.

Fourteenth. That the affairs of defendant corporation because of its insolvency are in a chaotic condition and it is impossible for defendant to continue operating excepting under a receiver. That to preserve and protect said plant from great loss, damage and detriment further expenditures must be made thereon but defendant has absolutely no means of raising funds to thus protect its said plant or repair or improve the same, and unless such repairs and improvements are made promptly the water supply of defendant corporation will cease to become available to the town of Conrad or its inhabitants and said corporation must cease to operate. Plaintiff alleges that it will require the immediate expenditure of at least \$1,000 to continue the operation of defendant's plant and further expenditures will undoubtedly become necessary to preserve said plant and the property upon which said plaintiff has



its lien from great loss and material depreciation in value. That there is absolutely no way for defendant corporation to thus protect and preserve its property or continue its operations of its said water service system and accordingly it is imperatively necessary that a receiver be forthwith appointed to take charge of the assets and property of said defendant. That the property subject to plaintiff's lien is in imminent danger of being lost, materially injured, depreciated in value and rendered worthless to plaintiff and all parties interested in the affairs of defendant corporation unless a receiver is forthwith appointed. That in order to protect the property of various taxpayers of Conrad from great loss and destruction and to maintain defendant's said plant and protect it from depreciating and being materially injured, the appointment of a receiver for the defendant is an imperative necessity, since defendant is [68] financially unable to continue its operations of its said water service system or even to maintain the same or protect it from great loss and depreciation.

WHEREFORE, plaintiff prays for judgment against said defendant as follows:

1. That a receiver be immediately appointed by this Honorable Court to take charge of all the assets and property of defendant corporation, and to maintain, preserve and operate the same and to hold all of said property and the income thereof subject to the order of this Honorable Court for the use and benefit of this plaintiff and all parties in interest as this Honorable Court may direct.



2. That it may be adjudged and decreed that this plaintiff has a valid lien upon all the property described in the fourth paragraph of plaintiff's complaint on file herein, together with all the water, water rights, franchises, and appropriations used in connection therewith and for the use and enjoyment of which the said water system has been constructed and installed, to secure the payment to this plaintiff from defendant of the sums due this plaintiff as hereinbefore alleged, together with plaintiff's costs and disbursements herein incurred, and that all of said property may be ordered and directed to be sold under an order and decree of this court and the proceeds thereof applied to the payment of plaintiff's claim as aforesaid, or that such other and further order may be made and such further relief afforded as this Honorable Court may deem proper.

3. That plaintiff may have judgment against defendant for the sum of \$54.70, together with legal interest thereon from March 10th, 1915, together with all its costs and disbursements herein incurred, including the filing fee of said lien.

4. That the usual decree may be drawn for the sale of said property, or such part thereof as may be necessary to satisfy [69] plaintiff's claim.

PERRY D. TRIMBLE,  
Attorney for Plaintiff.

State of Montana,  
County of Teton,—ss.

J. C. Price, being first duly sworn, on oath deposes and says: That he is an officer, to wit: The President and Manager of Conrad Mercantile Company, a cor-

poration, named as plaintiff in the foregoing complaint; that he has heard read the foregoing complaint and knows the contents thereof, and that the same is true of his own personal knowledge.

J. C. PRICE.

Subscribed and sworn to before me this 16th day of March, 1915.

[Seal]

PERRY D. TRIMBLE,  
Notary Public for the State of Montana, Residing  
at Great Falls.

My commission expires March 9, 1918.

**Exhibit "A" to Complaint in Conrad Mercantile Co.  
v. Conrad City Water Co.**

KNOW ALL MEN BY THESE PRESENTS:  
That Conrad Mercantile Company, a corporation duly organized and existing under and by virtue of the laws of the State of Montana, with its principal office and place of business located at Conrad, Montana, did, during that period of time commencing on the 1st day of September, 1914, and ending on the 10th day of March, 1915, furnish material and supplies for that certain pumping plant of defendant corporation hereinafter designated as "improvement" erected, constructed and situated upon the parcel of land to which this lien applies and attaches, to wit:

The northwest quarter of the southeast quarter of Section Eighteen (18), Township Twenty-eight (28) North of Range Four (4) West, Montana, Meridian, Teton County, Montana, and upon the waterworks and water service system of Conrad City Water Company extending from the said wells and pump-

ing plant situate upon the aforesaid parcel of land to and throughout the [70] town of Conrad for the purpose of distributing water through the service pipes of defendant corporation and furnishing water supply to the town of Conrad and to its inhabitants, said improvement consisting of one entire unit or system commonly known as the plant of the Conrad City Water Company. That all the material and supplies thus furnished were used in and upon said improvement and said Conrad City Water Company plant and became a material valuable and permanent part thereof; that the value of the material and supplies thus furnished for the foregoing improvement upon the foregoing described land and water plant amounted to the sum of \$54.70, which will more fully appear by the itemized statement of said material and supplies hereto annexed, marked Exhibit "A" and made a part hereof, which statement is a just and true account of the amount due Conrad Mercantile Company for the aforesaid material and supplies after allowing all credits thereon.

That said material and supplies are set forth in said statement marked Exhibit "A" were and are worth the reasonable prices therein charged therefor and that all of said material and supplies and the whole thereof so furnished by Conrad Mercantile Company were necessary for the construction, completion and repair of said improvement, waterworks and water service system of Conrad City Water Company, and the whole thereof were used in and upon the construction, completion and repair of said improvement, waterworks and water service system

of Conrad City Water Company during the time aforesaid and at the special instance and request of Conrad City Water Company, the person for whose immediate use and benefit the said material and supplies were furnished; that the owner and reputed owner of the aforesaid improvement, waterworks and water service system and the lands hereinbefore specifically described upon which said improvement, waterworks and water service system is situated is now and [71] during all the period of time aforesaid was Conrad City Water Company, and that each and all of said articles, material and supplies were actually furnished by Conrad Mercantile Company and used in the construction, completion and repair of said improvement, waterworks and water service system with the full knowledge, consent and approval of said Conrad City Water Company, the person against whose property this lien is filed; that the legal title of record to the land hereinbefore described and the said waterworks and water service system during all the period of time hereinbefore mentioned and referred to and does now stand in the name of Conrad City Water Company.

That desiring to benefit itself of the benefit of Chapter 2 of Title 4 of the Revised Codes of the State of Montana, being Sections numbered 7200 to 7300, inclusive, of the Revised Codes of the State of Montana for the year 1907, it is the intention of said Conrad Mercantile Company to file this statement of account in the office of the clerk and recorder of Teton County, Montana, within the time provided by law in order to secure the payment of the amount



due said Conrad Mercantile Company on said account.

That no part of said amount aforesaid, viz.: \$54.70, has been paid except the sum of NO dollars, and the full balance thereof, to wit: \$54.70 is justly due, owing and wholly unpaid on said account after allowing all credits thereon, all offsets and any and all counterclaims; that said Conrad Mercantile Company accordingly claims the benefit of the laws of the State of Montana relating to liens upon real property and claims a lien upon the foregoing described improvements and land for the satisfaction of the amount so due it as aforesaid, also claiming a lien upon the entire water system of said debtor and the satisfaction of the amount so due it as aforesaid, claiming said lien upon said improvement and upon the land upon which the same is situate and the entire system of said debtor to the highest extent in area or [72] acreage to which said Conrad Mercantile Company can or could lawfully make claim under and by virtue of the provision of Chapter 2 of Title 4 of the Revised Codes of the State of Montana for the year 1907.

CONRAD MERCANTILE COMPANY.

By J. C. PRICE,  
Manager.

State of Montana,  
County of Teton,—ss.

J. C. Price, being first duly sworn, on oath, deposes and says: That I am the manager of the Conrad Mercantile Company; that I have read the foregoing notice and claim of lien and know the contents



thereof; that said statement and notice of lien contains a just and true account of the amount due said Conrad Mercantile Company for materials and supplies as therein set forth after allowing all credits thereon and all offsets and counterclaims; and also contains a correct description of the property to be charged with said lien, and that all the allegations of said notice and statement of lien are true of my own knowledge; that I have also examined the statement of account annexed to said lien claim and made a part thereof and marked exhibit "A," and that the same contains a just and true account of the amount due Conrad Mercantile Company after allowing all credits thereon, all offsets and counterclaims, and is true and correct in all respects of my own personal knowledge.

J. C. PRICE.

Subscribed and sworn to before me this 16th day of March, 1915.

[Seal]

PERRY D. TRIMBLE,

Notary Public for the State of Montana, Residing at  
Great Falls.

My commission expires March 9, 1916.

# EXHIBIT "A."

## CONRAD CITY WATER COMPANY

In account with

CONRAD MERCANTILE COMPANY.

[73]

1914.

Sept.	1.	Bolts, \$2.00, 5 gals. Gasoline \$1.75..	3.75
	2.	Sand Paper .....	1.05
	2.	Galvanized ....	.25

	5.	Paint . . . . .	1.25
	12.	Paint . . . . .	.35
	14.	10 lbs. nails . . . . .	.50
	15.	Paint . . . . .	2.00
	19.	5 lbs. cup grease . . . . .	.85
	21.	Oil . . . . .	1.50
Oct.	2.	1 Oiler .25, 2 cans paint, .25 gal. Oil 1.00 . . . . .	1.50
		Packing .10 Solder .35 . . . . .	.45
	14.	6¼ sheets packing . . . . .	7.50
		1 pick handle coupling . . . . .	.35
	15.	2½ lbs. nuts .30 packing .10 . . . . .	.40
	16.	bolts . . . . .	2.75
	23.	Batteries . . . . .	2.10
	27.	Bolts and nuts . . . . .	1.40
Nov.	5.	2 gals. oil . . . . .	2.00
	9.	5 gals. oil . . . . .	1.50
	12.	paint . . . . .	.20
	13.	Solder . . . . .	.15
	23.	5 lbs. cup grease . . . . .	.85
	28.	paint . . . . .	.20
	24.	paint . . . . .	1.50
Dec.	1.	2 Unions 1½" .80 packing .25 . . . . .	1.05
	7.	1 file . . . . .	.30
	8.	1 coupling .10 plug .05 . . . . .	.15
	10.	2½" plugs . . . . .	.05
	12.	Belt lacing .50 cyl. oil .75 gal. oil 1.50 . . . . .	2.75
	14.	Coupling plugs . . . . .	.45
	28.	10 lbs. grease . . . . .	1.85

1915.

Jan. 12.	Solder .....	.35
19.	" .....	.35
20.	Batteries ..	1.40
25.	6 Batteries .....	2.10
29.	3 sheets emery paper.....	.15
30.	5 lbs. grease.....	1.00
Feb. 1.	4 lbs. nails.....	.20
2.	1 $\frac{3}{4}$ lbs. sheet packing.....	2.10
	5 gals. gasoline.....	1.75
6.	5 gals. oil.....	1.00
8.	2 lbs. nails.....	.10
23.	5 lbs. cup grease.....	.85
24.	2 1" hose clamps.....	.40
Mar. 4.	Packing ....	1.00
10.	1 pail grease.....	1.00
		<hr/>
		\$54.70

State of Montana,

County of Teton,—ss.

I, James Gibson, Clerk of the District Court of the Eighth Judicial District of the State of Montana, in and for the County of Teton, do hereby certify that the foregoing is a true and correct copy of complaint in the case of Conrad Mercantile Company, a corporation, vs. Conrad City Water Company, a corporation, now on file and of record in my office.

WITNESS my hand and the seal of said Court this 20th day of April, 1916.

[Seal]

JAMES GIBSON,

Clerk.

Whereupon Defendant's Exhibit 6, in words and figures as follows, to wit:

**Defendant's Exhibit 6—Complaint in Intervention  
of Pondera Valley Trust Bank, as Trustee, etc.**

[Title of Court and Cause.]

**COMPLAINT IN INTERVENTION.**

Now comes Pondera Valley State Bank, as Trustee, Intervenor [75] hereinafter designated for brevity, Plaintiff, and by leave of Court first had and obtained, filed this as its complaint in Intervention on the above-entitled cause and as the ground of its intervention, complains and alleges:

First. That Pondera Valley State Bank, Intervenor, hereinafter designated as plaintiff, is now and at all the times hereinafter mentioned and referred to was a corporation duly organized and existing under and by virtue of the laws of the State of Montana, with its office and principal place of business located at Conrad, Teton County, Montana.

Second. That the defendant Conrad City Water Company is now and at all the times hereinafter mentioned or referred to was a corporation duly organized and existing under and by virtue of the laws of the State of Montana, with its office and principal place of business located at Conrad, Teton County, Mont.

That the defendant Mercantile Company is now and at all the times hereinafter mentioned was a corporation duly organized and existing under and by virtue of the laws of the State of Montana, with its office and principal place of business at Conrad, Teton County, Montana.

That the defendant Pacific Coast Pipe Company is now and at all the times hereinafter mentioned or referred to was a corporation duly organized and existing under and by virtue of the laws of the State of Washington.

Third. That the defendant Conrad City Water Company hereinafter designated for brevity as the Company, on August 26th, 1910, by virtue of the power and authority conferred upon it by the laws of the State of Montana, under its charter or articles of incorporation and for the purpose of raising funds with which to carry on its corporate purposes by Resolution duly passed and unanimously adopted by its shareholders and directors at legal and regular meetings of both the stockholders and the [76] Board of Directors of said Company, duly and lawfully called and held, authorized and directed the execution and issue of its coupon bonds to the aggregate amount of \$80,000 of principal being forty bonds of \$1,000 each numbered from 1 to 40, both inclusive, 48 bonds of \$500 each, being numbered 41 to 88, both inclusive, and 160 bonds of \$100 each, numbered from 89 to 248, both inclusive.

Fourth. That to secure the payment of the principal of the bonds aforesaid, according to the respective terms of said bonds, and of the coupons pertaining thereto, and the performance of the covenants therein contained, the Company, in pursuance of the concurrence of all holders of the capital stock of said Company and in conformity with law, and to the resolutions and authority of its Board of Directors, duly executed, acknowledged and delivered to



Pondera Valley State Bank as Trustee, a Mortgage or Deed of Trust bearing date August 26th, 1910, a true copy of which said mortgage is hereto annexed, marked exhibit "A," and made a part of this complaint as fully and effectually to all intents and purposes as if said original Mortgage or Deed of Trust were set forth in this paragraph *verbatim*.

Fifth. That said Mortgage was duly sealed with the Corporate or common seal of Conrad City Water Company attested by its Secretary and subscribed in its corporate name by its President. That said Mortgage was duly acknowledged, approved and certified by said Company on August 26th, 1910, in all respects so as to entitle the same to be recorded in the county wherein the premises and property or any part thereof embraced in and covered by said mortgage were situate, viz.: In the office of the Clerk and Recorder of Teton County, Montana, on December 14th, 1910, at 2:00 P. M. in Book 4-B of Mortgages, at page 148 et seq., all of which will more fully appear by reference to the original mortgage. That ever since the acceptance of said trust plaintiff [77] has continued to perform and now performs its duties as Trustee thereunder.

Sixth. That in and by said Mortgage or Deed of Trust dated August 26th, 1910, said Conrad City Water Company did duly grant, bargain, sell, convey, assign, confirm, transfer and Mortgage unto this plaintiff as such trustee and its successors in trust and assigns, all the following described property. All water rights, reservoir sites, reservoirs, pipelines, easements, contract rights, franchises and

property of whatsoever kind or description now owned or which may hereafter be acquired by the said company in connection with, or being a part of, its system of waterworks in the said Town of Conrad. Also all rights acquired by the company under and by virtue of that certain franchise known as Ordinance No. 2-A passed by the Town Council of the said Town of Conrad, and approved by the Mayor of said Town on the 13th day of November, 1909, being an ordinance or franchise granting to Ben Hager and to his successors and assigns, for the period of thirty (30) years, the right to construct, maintain and operate a gravity system of waterworks in said town, and the right to sell water to the said town and to the inhabitants thereof, which franchise, for value, was thereafter duly assigned to said company.

Also all the real estate, lands, tenements, hereditaments, and easements wheresoever situate; and all buildings, engines, boilers, machinery, equipment, appliances, fixtures and apparatus now owned by the company or which it or its successors or assigns may hereafter own or acquire.

Also all rights, privileges, immunities, powers, things in action, contracts, claims and franchises, including all rights under any and all contracts or agreements in any way relating to the waterworks system or business of the company, however acquired, whether now possessed or hereafter acquired by the [78] company and used and enjoyed by it; and, also all of its property, real and personal, corporeal or incorporeal, of every kind and description, whether hereinbefore specifically enumerated or not,

or whether now owned or hereafter to be acquired, together with all and singular the tenements, and appurtenances thereunto belonging, and the reversions, remainders, incomes, rents, issues and profits thereof; and also all the estate, title, interest, property, possession, claim and demand whatsoever, as well at law as in equity, of the Company, of, in and to the said premises and property and every part and parcel thereof with the appurtenances.

Seventh. That at the time of the execution of said Mortgage or deed of trust the defendant, Conrad City Water Company, was also the owner of the following described property which accordingly by the express terms and provisions of said Deed of Trust became and was subject thereto; viz.: The northwest quarter of the southeast quarter of Section Eighteen (18) in Township Twenty-eight (28) North of Range Four (4) West of the Principal Montana Meridian, County of Teton, State of Montana; also all right to the use of the waters of a certain spring known as the "Dipping Tank Spring" situate on the Northwest quarter of the southeast quarter of Section Eighteen (18) in Township twenty-eight (28) north, Range Four (4) West, Teton County, Montana, the waters of which spring flow upon the southwest quarter of the northeast quarter of said section 18, also the use of all the surplus water of a certain spring known as the "Water Trough Spring" situate on the southeast quarter of the northeast quarter of said section 18, also an easement or right-of-way for a water pipe-line through the south half of the northeast quarter of said section 18; also that certain water right, notice

of which was filed by one Ben Hager for record in the office of the County Clerk and Recorder of Teton County, Montana, on the 17th day of November, 1909, and recorded in (9B) of Water Rights on page 409, [79] records of said Teton County, being an appropriation of two cubic feet per second of the waters of a certain spring on or near the northwest quarter of the southeast quarter of said section 18, also the right, title and interest of Ben Hager and Birdie Hager, his wife, in and to a certain contract made the 25th day of January, 1910, between Peter Deboer and the said Ben Hager, by the terms of which the said Peter Deboer agreed to convey to the said Ben Hager, his heirs and assigns, the right to construct, maintain and use a reservoir situate partially upon the southeast quarter of the southwest quarter and the southwest quarter of the southwest quarter of section 8, in Township 28 North, Range 3 West, Teton County, Montana, and also a right of way through the southwest quarter of said section 8, and the east half of the southeast quarter of section 7, in last mentioned township and range for a pipeline to conduct water to the town of Conrad which said contract is recorded in Book 5A of Miscellaneous at page 318, Records of Teton County; also all the east thirty feet of lots numbers 26, 27 and 28 in Block numbered 4 of the original townsite of Conrad, in the County of Teton and State of Montana, according to the official plat thereof on file in the office of the Clerk and Recorder of Teton County, Montana. Also the northwest quarter of the southeast quarter of Section 18, Township 28 North, Range



4 West, together with all the buildings, structures and improvements thereon.

Eighth. That accordingly there is now subject to the lien of said Mortgage or Deed of Trust the following described property, to wit, all the property mentioned, described, set forth and referred to in the two preceding paragraphs of this complaint, together with all the buildings, structures and improvements situate thereon and all the equipment appliances owned by said Conrad City Water Company or in which it has any interest whatsoever, together with all the rights, franchises [80] and assets of said Conrad City Water Company, and all other property, real, personal and mixed or every kind, nature and description and wheresoever situate owned by said defendant, Conrad City Water Company, on August 26th, 1910, and also all other property, real, personal, mixed of every kind, nature and description wheresoever situate which has been acquired by the Company since said date, together with all the rents, issues, profits, tolls and other income thereof accruing or accrued.

Ninth. That subsequent to August 26th, 1910, Conrad City Water Company duly issued, negotiated and delivered \$80,000 face value of said twenty year Face Mortgage six per cent gold bonds, each and all of which were and are secured by the aforesaid mortgage or deed of trust. All of said bonds were signed by the proper officers of said company, with its corporate seal attached and duly attested, all in the manner and form in and by said Mortgage or Deed of Trust, provided, and were duly authenti-



cated by the signature of plaintiff to the certificates thereon, endorsed as one of the series of bonds described in the said Mortgage or Deed of Trust and in said Bond mentioned. The said bonds, so issued, authenticated, negotiated and delivered, were substantially in the form set forth in said mortgage, and were made payable, both as to principal and interest, in gold coin of the United States of America, of or equivalent to, the then present standard of weight and fineness, at the office of this plaintiff in the Town of Conrad, Montana, or at the option of the holder at the National Park Bank in the City of New York, State of New York, and bearing interest until paid at the rate of six per centum per annum, payable semi-annually on the first days of July and January in each year after date, on presentation and surrender of the annexed coupons as they severally mature, without deduction for any tax or taxes on the principal or interest thereof which said company may by any present or future [81] law be required to pay thereon or retain therefrom and each and all of said bonds so issued, authenticated, negotiated and delivered are now outstanding unpaid.

Tenth. That in and by said Mortgage or Deed of Trust it was, among other things, covenanted and agreed on the part of the said Company as follows:

“The Company covenants that it will duly and punctually pay, or cause to be paid, to every holder of any bond issued and secured hereunder, the principal and interest accruing hereunder, at the dates and place, and in manner mentioned in such bond

and in the coupons thereto belonging, according to the true intent and meaning thereof, without deduction from either principal or interest for any tax or taxes imposed by the United States or any State, County, Municipality thereof, which the company may be required to pay, or to retain therefrom under or by reason of any present or future law.”

“The Company covenants, promises and agrees that as long as it has possession of said property, as hereinbefore provided, it shall and will, well and truly pay off and discharge each and every tax, assessment or other charge or liability, which may, from time to time, be lawfully levied or imposed by any competent authority upon the Company, its property and premises, rights and franchises, or upon any part thereof, the lien whereof might or would be held superior to the lien of this mortgage, and that, having possession as aforesaid, it shall and will diligently preserve all the rights and privileges granted, or upon it conferred, and all its property and premises, rights and franchises above described, subject to the lien and provision thereof, and not otherwise.”

“In case default shall be made in the payment of any installment of interest on any of the aforesaid bonds, and such default shall continue for a period of three months, then the [82] Trustee may, and upon the written request of the holders of One-Third in amount of all bonds then outstanding it shall declare the principal of all the said bonds to be due and payable, and thereupon the said principal shall be and become forthwith due and payable, anything

in said bonds or herein contained to the contrary thereof notwithstanding.

“And upon said principal sum being declared due and payable, it is expressly covenanted and agreed that all rights of entry, or entry and sale, or sale without entry, or to legal proceedings for foreclosure, shall immediately belong to and be fully vested in the Trustee according to the provisions of this Mortgage as fully as though the default were made in the payment of said principal at the maturity of said bonds.”

Eleventh. That the company has made default in the aforesaid covenants and conditions contained in said Mortgage or Deed of Trust in that it has failed to pay any installment of the interest money specified in the coupons attached to the issued and outstanding bonds as follows:

The installment of interest accruing on said bonds as specified in the coupons attached thereto on July 1st, 1913, amounting to \$2400.

The installment of interest accruing on said bonds as specified in the coupons attached thereto on January 1st, 1914, amounting to \$2400.

The installment of interest accruing on said bonds as specified in the coupons attached thereon on July 1st, 1914, amounting to \$2400.

The installment of interest accruing on said bonds as specified in the coupons attached thereto on January 1st, 1915, amounting to \$2400.

That no part of the said interest money due as aforesaid has been paid and the same are now due, owing and wholly unpaid [83] from the Company

to the holders of said bonds. That said defaults in the payment of the installments of interest have continued for a period of more than three months and plaintiff alleges that after the expiration of said period of three months and upon the written request of the holders of more than one-third in amount of all of said bonds outstanding and secured by said mortgage, and upon being satisfactorily indemnified for any costs, liabilities and expenses to be incurred by it in the premises, on the 1st day of June, 1915, plaintiff did duly declare the principal of all of said bonds then outstanding, to be immediately due and payable, and the principal of each and all of said bonds did, on the said 1st day of June, 1915, become due and payable, and the said principal has ever since remained and now is due, owing and unpaid by the Company; and that there is now due, owing and unpaid by the Company on the said bonds the principal thereof amounting to the sum of \$80,000, with interest thereon at the rate of six per cent per annum from the 1st day of January, 1915, and the following installments of interest; An installment of interest amounting to the sum of \$2,400 which became due and payable on the 1st day of July, 1913, with interest thereon at the rate of six per centum per annum from the said first day of July, 1913, and an installment of interest amounting to the sum of \$2,400, which became due and payable on the 1st day of January, 1914, with interest thereon at the rate of six per centum per annum from the said 1st day of January, 1914; and also an installment of interest amounting to \$2,400, which became due and payable



on July 1st, 1914, with interest thereon at the rate of six per centum per annum from the said 1st day of July 1914, and an installment of interest amounting to \$2,400, which became due and payable on January 1st, 1915, with interest thereon at the rate of six per centum per annum from the said 1st day of January, 1915. [84]

Twelfth. That the Company made no provision for the installments of interest becoming due as aforesaid. That the Company utterly failed to pay the County and State taxes levied *levied* and assessed on said property by Teton County, Montana, for the year 1914, and suffered said taxes to become delinquent and its said property to be sold for said delinquent taxes, amounting to the sum of approximately \$1,400.

Thirteenth. That the condition of the said Mortgage or Deed of Trust has not been performed and that the property covered by said Mortgage is insufficient to discharge the mortgage debt. That the said mortgaged property is in danger of being lost or materially injured unless the same is permitted to remain in the hands of a Receiver.

Fourteenth. That said defendant Conrad City Water Company is now and at all the times herein-after mentioned or referred to was the owner of a certain franchise known as Ordinance No. 2A passed by the Town Council of the said Town of Conrad, and approved by the Mayor of said Town on the 13th day of November, 1909, being an ordinance or franchise granting to Ben Hager, and to his successors and assigns, for a period of thirty (30) years



the right to construct, maintain and operate a gravity system of waterworks in said Town, and the right to sell water to said town and to the inhabitants thereof, which franchise, for value was thereafter duly assigned to said defendant. That under the terms of said franchise it becomes and is necessary for defendant corporation to furnish to the town of Conrad and its inhabitants a sufficient and dependable supply of water for municipal and domestic purposes and also as and for fire protection, and said defendant Conrad City Water Company, accordingly now and at all times hereinafter mentioned and referred to under the terms of said franchise is obliged to furnish to the said town of Conrad and the inhabitants thereof and deliver through its [85] various water mains and water service pipes, a sufficient supply of water for the use of the said town of Conrad in the exercise of its functions as a municipal corporation and also for the use of the property owners and inhabitants of said City.

Fifteenth. That in order to furnish said supply of water the company owns and operates a pumping plant, pipe-line and reservoir simply as a part of said waterworks and said water service system whereby the Company is enabled to pump water from wells and springs into its reservoirs and thence conduct the same by means of its pipe lines into its water mains and deliver through its said water mains at various points in the Town of Conrad, Montana, for the convenience and use of the inhabitants of the said Town of Conrad, and also for the

use of the Town of Conrad, a municipal corporation in the operation of its sewer system and fire hydrant service for the protection and conservation of property and health of the inhabitants of said municipal corporation and also the people residing in the vicinity of the Town of Conrad or transacting any business therein, as well as any people who own or who are in anywise financially interested in property located in Conrad or the immediate vicinity thereof.

Sixteenth. That said Town of Conrad has absolutely no water supply or means of obtaining water supply to flush its sewers or protect the lives and property of its inhabitants from loss, injury or destruction by fire other than the water furnished by the Company under its franchise and said town of Conrad can obtain no other water supply and that the safety, health and welfare of the inhabitants of the Town of Conrad demand that the Company shall continue to operate its plant and pump and deliver water throughout its mains and water service system and the various customers of the Company who are residents of the State of Montana, and owners and holders of property located within the said State demand that the Company shall continue to operate [86] and deliver water for their personal use as well as to protect their lives and property from destruction by fire and to enable them to operate their sewer system and thereby avoid the disease and ill-health which would necessarily result from want of an adequate water supply.

Seventeenth. That said Conrad City Water

Company is indebted to various persons, firms and corporations exclusive of the indebtedness secured by said Mortgage or Deed of Trust in the aggregate amount of \$96,000, and its total assets are worth less than \$60,000, and is now absolutely insolvent and has confessed its inability to care for its said waterworks and water service system and to continue to operate the same and is without money or means of obtaining or borrowing money with which to continue the operation of its said water service system.

Eighteenth. That said defendant has absolutely no means or resources from which to pay the said money thus due from it and no property upon which it can give security to raise said money either for the purpose of liquidating its said indebtedness or continuing the operation of its said plant. That said defendant is absolutely insolvent, and without the funds, means or money with which to continue the operation or to maintain its said waterworks and water service system or any part thereof, or to even care for or preserve said waterworks and water service system or any part thereof. That said water plant must be kept in operation so as to furnish the town of Conrad and its inhabitants a water supply for municipal and domestic purposes and for fire protection. That in order to do this requires constant care and attention and constant supervision and the expenditure of a considerable amount of money daily in order to pump and supply sufficient water for delivery through the mains of defendant corporation for the benefit of the general public living [87] at and in the vicinity of Conrad,

Montana. That the entire value of defendant's plant and water service system consists in its being maintained and operated in good condition and repair; that if its operation should cease as an unavoidable result the Town of Conrad and the inhabitants thereof will be deprived of water to operate or flush its sewer or pumping system in the various homes, hotels and public buildings there so that great and irreparable loss and injury would result, not only to the defendant corporation but to the public at large. That unless said plant of defendant, Conrad City Water Company, is thus operated and unless it continues to deliver water under its various contracts with the Town of Conrad and the owners of buildings therein and the inhabitants thereof said water service system will be materially injured and depreciated in value and rendered virtually valueless and this plaintiff will be deprived of the only security upon which it has a lien and the only property and assets upon which it can assert a valid claim for reimbursement of the moneys thus due plaintiff as Trustee aforesaid, and the various bond holders and creditors of the company will be deprived of the only property from which they can hope to realize anything upon their respective claims.

Nineteenth. That the company's waterworks and water supply system is valuable only as a going concern because should it suspend operations the plant itself will be materially injured, depreciated in value and plaintiff's security impaired and rendered valueless and lost to this plaintiff and the very



franchise upon which the company operates and which is its principal asset will become subject to forfeiture or revocation by the Town Council of the Town of Conrad, and will become valueless to plaintiff and defendant as well, thereby depriving plaintiff and the various bond holders of the property upon which the plaintiff has a lien for the satisfaction of its aforesaid claims. That [88] unless the Company's said water plant is kept in operation defendant will be exposed to innumerable suits and claims for damages from the various property owners and inhabitants of the Town of Conrad, who are absolutely dependent upon the company's said plant for water supply to protect their property against loss and destruction by fire and to protect the health and welfare of themselves and all people residing within or visiting the town of Conrad. That in the event that the said Conrad City Water Company even temporarily suspended its operations, hundreds of people depending upon it for water supply will be instantly deprived of water and be irreparably damaged and will sustain great and irreparable loss and great suffering and want, and said defendant will become liable to its water users for damages thus caused by suspending its said operations of its said water system.

Twentieth. That said defendant, Conrad City Water Company, is obliged by its aforesaid franchise with the Town of Conrad to furnish water to said Town and the inhabitants thereof and all its assets consist of said franchise and said water plant. That there are hundreds of home builders absolutely



dependent upon the water supply to be furnished and now being daily furnished by the Company and unless a receiver has charge of the Company's property, the pumping, carrying and delivering of water to said settlers and home builders will be suspended forthwith to their great loss and detriment. That to permit defendant, Conrad City Water Company, because of its insolvency to even temporarily suspend the pumping and delivering of water or to fail to furnish or deliver water through its said system or to delay in delivering the water in accordance with the vested rights of the homebuilders and property owners of Conrad and the multitude of inhabitants thereof who are resident tax payers within the State of Montana, and to expose their property to loss or destruction by fire because of the failure of the Company to promptly deliver said [89] water, would be a public calamity and would bring almost unending loss and want upon innocent settlers and homebuilders. That all this can be avoided by a receiver having charge of the assets and property of the defendant, Conrad City Water Company, and that unless a receiver of this Honorable Court is thus continued in the custody and control of the company's assets, the maintenance and operation of the said water plant will cease and be suspended because of the Company's lack of credit and funds and inability to raise funds with which to maintain its said water plant or continue the operation thereof or even to preserve said plant and pipelines and water service system from great depreciation, loss and injury.

Twenty-first. That the nature and scope of the corporate purposes for which defendant, Conrad City Water Company, was formed are such, and the object and purpose of its franchise from the Town of Conrad are such, and its innumerable contracts for the delivery of water to the multitude of owners and occupants of property at and in the vicinity of Conrad, Montana, are such that the defendant, Conrad City Water Company, is a *quasi*-public corporation and its purposes and objects are public utilities of an exceedingly high character, and accordingly the work of maintaining and operating the said water system and repairing the same and if necessary enlarging and increasing its capacity so as to serve the public at large advantageously are of such vital importance to the State of Montana, and its citizens at large as to justify this Honorable Court as recognizing said Conrad City Water Company as belonging to that class of public service enterprises for whose preservation on behalf of the general public, the exercise of the highest degree of power by the court of equity is justified and required by a public policy of this state as evidenced by its constitution and codes and that unless a receiver by this Honorable Court duly appointed [90] is forthwith empowered to have immediate charge of defendant corporation, Conrad City Water Company, and all its assets and administer upon the same and maintain and operate said water service system the same will become a loss to all parties in interest and will be the cause of loss and suffering to the innocent homebuilders and settlers dependent upon defendant

for water supply, for domestic uses and fire protection and for sewer flushing, and will work irreparable injury to the community at large.

Twenty-second. That the affairs of the Conrad City Water Company because of its insolvency are in a chaotic condition and it is impossible for defendants to continue operating except under a receiver. That to preserve and protect said plant from great loss, damage and detriment further expenditures must be made thereon, but defendant, Conrad City Water Company, has absolutely no means of raising funds to thus protect its said plant or repair or improve the same except through a Receiver of this Honorable Court, and unless such repairs and improvements are made promptly the water supply of said Defendant corporation will cease to become available to the town of Conrad or its inhabitants, and the corporation must cease to operate. Plaintiff alleges that it will require the immediate expenditure of at least \$1500 to continue the operation of the Company's plant and further expenditures will undoubtedly become necessary to preserve said plant and the property upon which plaintiff as Trustee has its lien from great loss and material depreciation in value. That there is absolutely no way for defendant corporation to thus protect and preserve its property or continue its operations of its said water service system except through the efforts of a receiver, and accordingly it is imperatively necessary that a Receiver have charge of the assets and property of said defendant, Conrad City Water Company. That in

order to protect the property of various tax-payers of Conrad from great loss and destruction and to maintain said [91] defendant's plant and protect it from depreciating and being materially injured, the appointment of a receiver for defendant is an imperative necessity, since defendant is financially unable to continue its operations of its said water service system or even to maintain the same or protect it from great loss and depreciation except through Receivership.

Twenty-third. That Conrad City Water Company is without funds to continue the operation of its plant except through a Receivership and unless in Receivership said defendant Company must suspend its operations and the maintenance, care and protection of its assets and property and particularly its water plant and water service system, and unless a Receiver is continued in charge of the affairs of said defendant company there will be a multicplicity of suits and litigation against said defendant Company and innumerable damage claims which will utterly ruin Conrad City Water Company, waste and squander its assets and permit the same to be materially injured, dissipated and rendered valueless to this plaintiff and the various bondholders who are owners and holders of bonds mentioned and described in and secured by said Mortgage or Deed of Trust hereby sought to be foreclosed, and the various other creditors and all other parties interested in Conrad City Water Company, so that plaintiff will lose the property upon which it has its foresaid mortgage lien, which property



if administered upon a receiver will ultimately yield sufficient money to pay a substantial dividend upon the indebtedness secured by said mortgage, and partially satisfy said debt. That except through a receivership the property of said Conrad City Water Company in its present condition cannot be made to yield any revenue or income and plaintiff's claim will become a loss. That the property subject to the lien of said mortgage or Deed of Trust is in imminent danger of being lost, materially injured, depreciated in value and rendered valueless to this [92] plaintiff as Trustee and all parties interested in the affairs of Conrad City Water Company unless a Receiver is forthwith placed in charge of said Conrad City Water Company and the careful and skillful efforts of a Receiver in charge of said property and assets are necessary and proper in order to preserve and protect all of said property and rights from great depreciation in value and loss and to prevent irreparable injury to this plaintiff and the holders of the bonds referred to in said Mortgage and also to the creditors of and all persons and corporations interested in the property, rights and affairs of said defendant Conrad City Water Company, and especially the customers and users of water from said Company, and for the like purpose and *end* the services of a Receiver will continue to be necessary until after the termination of this suit.

Twenty-fourth. That because of the matters and things hereinbefore alleged and fully realizing the necessity therefor this Honorable Court has heretofore by its order and decree duly given, rendered,



made and entered in that certain cause wherein Conrad Mercantile Company was named as plaintiff said Conrad City Water Company was named as defendant in Case No.     pending on the files of this court, to which said case reference is hereby made and the pleadings in which said case are hereby referred to and made part of this cause, the same to all intents and purposes as if set forth at length, duly appointed a receiver to take charge of all the property and assets of said Conrad City Water Company, a copy of which said order so appointing said receiver is hereto annexed, made a part hereof and marked Exhibit "B." That it is imperatively necessary that said receiver, or some equally competent person continue in charge and possession of all the assets and property of Conrad City Water Company as receiver pending this litigation in order to preserve and protect the said property and assets and that said [93]. Receivership to be thus continued and the said Receiver heretofore appointed in said prior action be appointed, designated as Receiver herein and directed to continue his said Receivership of said property and assets for the benefit of this plaintiff as Trustee, the Bondholders of Conrad City Water Company, and all the creditors of and all persons and corporations interested in the property, rights and affairs of said Conrad City Water Company.

Twenty-fifth. That the defendants Conrad Mercantile Company and Pacific Coast Pipe Company have, or claim to have, some interest in the property covered by the lien of the aforesaid mortgage or

Deed of Trust as subsequent incumbrances thereon, but the interest of said defendants Conrad Mercantile Company and Pacific Coast Pipe Company is in all respects, subject, subordinate and inferior to the lien of plaintiff's said Deed of Trust.

Twenty-sixth. That prior to the commencement of this action no proceeding at law or in equity for the recovery of the indebtedness secured by said mortgage or Deed of Trust, or any part thereof, principal or interest, has been had or taken, and that none of the holders of the said bonds or coupons has taken or caused to be taken any proceedings for the recovery of said indebtedness represented thereby, or any part thereof.

Twenty-seventh. That plaintiff has not assigned or transferred its interest in the aforesaid mortgage or Deed of Trust or any part or portion thereof and at all times since the acceptance of said trust plaintiff has continued to own and hold a valid mortgage lien upon all the property and assets mentioned and described in said mortgage or deed of trust to secure the aforesaid bonds, and has in all respects continued to perform and now performs its duties as Trustees thereunder.

Twenty-eighth. Plaintiff alleges that it has been obliged [94] to employ counsel to represent it in the administration of its said trust and to prepare and prosecute this action, and alleges that the sum of \$5,000 is a reasonable sum to be allowed plaintiff as and for attorneys' fees for the prosecution of this action upon said Mortgage or Deed of Trust.

WHEREFORE plaintiff prays for judgment

against the said defendants as follows:

1. That plaintiff may have judgment against said defendants Conrad City Water Company for the amount due upon said bonds, to wit, \$80,000 principal and \$9,600 interest, together with interest on \$82,400 thereof at the rate of six per cent per annum from January 1st, 1915, on \$2,400 thereof from July 1st, 1913; on \$2,400 thereof from January 1st, 1914, and on the remaining \$2,400 thereof from July 1st, 1914, also for such sum as this Honorable Court may deem reasonable to be allowed plaintiff as and for attorneys fees for the prosecution of this action upon said Mortgage, or Deed of Trust.

2. That a Receiver may be appointed to take immediate possession of all of the assets and property of said Conrad City Water Company, and all the property, rights, interests and franchises now subject to the lien of said Mortgage or intended so to be, and of the income, earnings, rents, tolls, issues and profits thereof; and that said Receiver may be empowered and directed to take, hold and possess the same and have exclusive charge and control thereof, with the usual powers of Receivers in like cases, subject only to the order of this Court. That such Receiver be directed to operate and manage the said properties and franchises; to pay out of the earnings thereof all necessary operating expenses; to keep the properties, machinery and equipment and appurtenances in repair; to apply the earnings as directed by the court, and otherwise to discharge all conditions ordinarily imposed upon Receivers of similar properties appointed [95] by the

Court. That the Company and all persons be directed and commanded to turn over, surrender and yield possession to such Receiver as may be appointed herein, and all of the said premises, properties, rights, interests and franchises subject to said mortgage.

3. That an account be taken of all the property subject to the lien of said mortgage, whether acquired before or after the execution and delivery thereof; that the company may fully disclose all the property and interest not hereinbefore sufficiently described and set forth which are conveyed or intended to be conveyed by said mortgage and may be compelled to convey and transfer to plaintiff by way of further assurance such of said properties and interests as have not been specifically conveyed or transferred.

4. That Conrad City Water Company, Conrad Mercantile Company and Pacific Coast Pipe Company and all persons claiming under Conrad City Water Company subsequent to the commencement of this action be absolutely barred and foreclosed of and from all right, title, lien, claim and equity of redemption of, in and to the said mortgaged premises and property and each and every part thereof; that the said mortgaged premises and property may be sold according to law and the rules and practice of this court, to satisfy the amount now due and hereafter found to be due on the said bonds and coupons, and that so much of the said mortgaged premises and properties as constitute the waterworks system of the company, including all easements,



right of way and lands which are occupied by the reservoirs, canals, laterals, aqueducts, pipes, pipelines, syphons, ditches or other water mains or works and all rights of access and other rights appertaining thereto and growing out of or used in connection therewith, to be sold without any right of redemption. That out of the moneys arising from the sale of the mortgaged premises and property, plaintiff be paid first, the costs, expenses and allowances of this action, including the reasonable compensation of plaintiff and its attorneys, [96] counsel and agents; and second, the amount found due on said bonds and coupons, with interest to the time of such payment so far as the amount of moneys properly applicable thereto will pay the same, and that the company be adjudged to pay any deficiency that may remain after such application. That the said mortgage be decreed to be and to constitute a valid and subsisting lien upon the premises and property hereinabove described as now subject to the said mortgage and upon all other property which the company may have acquired subject to the lien thereof, and upon the reversions, remainders, rents, issues, income, product and profits thereof, and all estate, right, title, interest and claim whatsoever, as well in law as in equity, of the company in and to the same.

5. That plaintiff may become a purchaser at said sale; that the sheriff execute a deed to said purchaser; that said purchaser be let into immediate possession of the premises described on production of sheriff's certificate of sale therefor; that plaintiff may be permitted to have the rents, profits and in-



come of said mortgaged premises of the immediate possession thereof, and that the plaintiff may have such other and further relief in the premises as to the Court may seem meet and equitable.

PERRY D. TRIMBLE,

Attorney for Plaintiff.

State of Montana,

County of Cascade,—ss.

P. Kelly, being first duly sworn, on oath deposes and says that he is an officer, to wit, the president of the Pondera Valley State Bank; that he has heard read the foregoing complaint and knows the contents thereof, and the same is true of his own knowledge.

P. KELLY.

Subscribed and sworn to before me this 16th day of June, 1915.

[Seal]

H. NORSKOG,

Notary Public for the State of Montana, Residing  
at Great Falls.

My commission expires March 7, 1917. [97]

State of Montana,

County of Teton,—ss.

I, James Gibson, Clerk of the District Court of the Eighth Judicial District of the State of Montana, in and for the County of Teton, do hereby certify that the foregoing is a true and correct copy of Complaint in Intervention in the case of Conrad Mercantile Company, a corporation, vs. Conrad City Water Company, a corporation, Pondera Valley State Bank, as Trustee, Intervenor, now on file and of record in my office.

WITNESS, my hand and the seal of said court this 20th day of April, 1916.

[Seal]

JAMES GIBSON."

Thereupon the plaintiff, for the purpose of proving the date of levy of the writ of attachment upon which the judgment was recovered, offered to read from the original writ on file in Case No. 351 in this court, in which the Pacific Coast Pipe Company was the plaintiff and Conrad City Water Company the defendant, the return of the United States Marshal, which said return so read was in words and figures as follows, to wit:

**Return of U. S. Marshal to Writ of Attachment in  
Pacific Coast Co. v. Conrad City Water Co.**

"I do hereby certify that I received the writ of attachment hereto attached on the 7th day of November, 1913, and personally served same by delivering a copy thereof to M. S. Darling, President of the defendant corporation, Conrad City Water Company, at the office of said company in the city of Conrad, Teton County, Montana, on the 8th day of November, 1913; that I levied upon and attached all moneys, goods, credits, effects, debts due and owing, and all other personal property belonging to said defendant Conrad City Water Company in the possession or under the control of the Pondera Valley State Bank and the Municipal Construction Company; that I levied upon and attached all of the real property of said defendant Conrad City Water Company by filing a copy of this writ, together with a notice of attachment, describing said [98] real

property, in the office of the County Clerk and Recorder of Teton County, Montana.

Dated this 8th day of November, 1913.

WILLIAM LINDSAY,

United States.

By Thad C. Pound,

Deputy.

(Filed Nov. 14th, 1913.)

For the purpose of proving the date of the original indebtedness, or the note upon which the judgment in this suit was recovered, the plaintiff offered to read, and read, from the complaint attached to the judgment in Case No. 351, in which action the judgment in suit was recovered, the following allegation "That on the 7th day of February, 1911, the defendant, for value received, made, executed and delivered to the plaintiff its certain promissory note," describing the same.

Thereupon the plaintiff offered in evidence the alias execution issued in Case No. 351, of this court, Pacific Coast Pipe Company, plaintiff, vs. Conrad City Water Company, defendant. For the purpose of fixing the date of the several levies of execution, and the proceedings of the marshal under the execution, which said paper, omitting the title of court and cause, was in words and figures as follows, to wit:

**Alias Execution in Pacific Coast Pipe Co. v. Conrad City Water Co.**

The President of the United States of America, to the Marshal of the United States of America for the District of Montana, Greeting:

WHEREAS, on the 3d day of July, A. D. 1914,

the Pacific Coast Pipe Company, a corporation, recovered a judgment in the District Court of the United States, for the District of Montana, against the Conrad City Water Company, a corporation, for the sum of \$9,689.40, damages, and \$711.25 costs, together with interest thereon at the rate of eight per cent per annum from [99] date of said judgment until paid, as appears to us of record;

And, whereás, the Judgment-roll in the action in which said judgment was entered is filed in the clerk's office of said court, and the said judgment was docketed in said clerk's office on the day and year first above written;

And, whereas, the sum of \$10,400.65, with interest thereon at the rate of eight per cent per annum, from the date of said judgment, is now (at the date of this writ) actually due on said judgment, together with the sum of \$3.10 accruing costs, also \$104.03, percentage at the rate of 1% upon the amount found due on the date of satisfaction of this writ;

NOW, you, the said marshal, are hereby required to make the said sums due on said judgment, with interest as aforesaid, costs, accruing costs, and percentage to satisfy the said judgment, out of the personal property of said debtor, or if sufficient personal property of said debtor cannot be found, then out of the real property in your district belonging to said debtor on the day whereon said judgment was docketed, or at any time thereafter, and that you have said money in said court, and return this writ within sixty days after your receipt thereof, with what you have done endorsed hereon.

WITNESS the Honorable GEORGE M. BOURQUIN, Judge of said District Court this 14th day of April, A. D. 1915, and of our Independence the one hundred thirty-ninth. Attest my hand and the seal of the said District Court the day and year last above written.

GEORGE W. SPROULE,

Clerk.

By C. R. Garlow,

Deputy Clerk.

Thereupon plaintiff rested. [100]

Whereupon defendants offered in evidence "Defendant's Exhibit 7," being the appearance made by the Conrad City Water Company, in the suit of Conrad Mercantile Company against Conrad City Water Company, which said paper in words and figures is as follows:

**Defendant's Exhibit 7—Appearance of Conrad City  
Water Co.**

[Title of Court and Cause.]

**APPEARANCE.**

Now comes Conrad City Water Company, a corporation, and offers its appearance in the above-entitled proceeding, and said corporation admits:

First. That defendant is a corporation organized and existing under and by virtue of the laws of the State of Montana.

Second. That said defendant corporation is now in fact insolvent and said corporation accordingly waives notice of plaintiff's application for the appointment of a receiver and hereby consents to the



appointment of a receiver as prayed for in the complaint on file herein.

Third. Defendant admits that plaintiff has a valid lien upon the property of defendant corporation as set forth in the complaint on file herein, and admits that the appointment of a receiver is necessary to protect the lien of plaintiff and the best interests of all parties concerned in the affairs of said corporation, both as shareholders, bondholders and general creditors.

CONRAD CITY WATER COMPANY.

By J. A. McDONOUGH,

Its Attorney.

CONRAD CITY WATER COMPANY.

By M. S. DARLING,

President.

Subscribed and sworn to before

J. A. McDONOUGH,

Notary Public.

(Duly verified.)

Thereupon defendant offered in evidence Exhibits "8" and "9," being the motion for the appointment of receiver in the suit of Conrad Mercantile Company No. 1407, and the order filed appointing a receiver. Both of which said papers are attached to [101] and made part of the answer of Conrad Mercantile Company and others in this action, and are not repeated herein for that reason.

Thereupon defendant offered to read in evidence Defendants Exhibits "10," "11," and "12," being, respectively, the petition of the Pondera Valley State Bank for leave to intervene in the suit of Con-

rad Mercantile Company against the Conrad City Water Company, the order granting the motion to intervene, and also the order granting the application of the Pondera Valley State Bank to file its foreclosure suit, which said exhibits are in words and figures as follows, to wit:

**Defendant's Exhibit 10—Petition of Pondera Valley State Bank for Leave to Intervene in Conrad Mercantile Co. v. Conrad City Water Co.**

[Title of Court and Cause.]

**PETITION FOR LEAVE TO INTERVENE.**

Now comes Pondera Valley State Bank, a Montana Corporation, as Trustee, and respectfully represents unto this Honorable Court that on or about August 26th, 1910, Conrad City Water Company made, executed and delivered to Pondera Valley State Bank, as Trustee, a Mortgage or Deed of Trust for the purpose of securing First Mortgage Six Per Cent Gold Bonds to the amount of \$80,000. That the corporation making said Mortgage or Deed of Trust is the same corporation of which the said James T. Stanford has been appointed Receiver. That bonds secured by said Mortgage or Deed of Trust amounting to \$80,000 have been issued and are now outstanding as legal, valid and binding obligations of the said Conrad City Water Company, and that said Conrad City Water Company has defaulted in the payment of the interest upon all of said bonds and has otherwise made default so as to entitle the said Mortgage to be foreclosed.

That said Mortgage or Deed of Trust creates a lien upon all the assets and property of Conrad City

Water Company prior and superior to the lien of Conrad Mercantile Company in the above-entitled action, and in order to preserve or protect the [102] rights of the bondholders who own and hold the bonds secured by said Mortgage or Deed of Trust, your petitioner asks leave to file a complaint in intervention in the above-entitled action, a copy of which said complaint and intervention is herewith tendered to this Honorable Court for inspection.

WHEREFORE, your petitioner prays that this Honorable Court may make its order granting to your petitioner leave to file in the above-entitled action its said complaint and intervention which is hereby tendered for filing.

PERRY D. TRIMBLE,

Attorney for Pondera Valley State Bank as Trustee.

(Filed June 23d, 1915.)

**Defendant's Exhibit 11—Order Granting Leave to Pondera Valley State Bank to File Complaint, etc.**

[Title of Court and Cause.]

ORDER.

Having read the application of Pondera Valley State Bank, as Trustee, for leave to file a complaint in the District Court of the Eighth Judicial District of the State of Montana, in and for the County of Teton, for the purpose of foreclosing a Mortgage or Deed of Trust which was executed by Conrad City Water Company on August 26th, 1910, and having inspected and considered the said complaint which

it is proposed by the said petitioner to file in said foreclosure proceeding and it being proved to the satisfaction of this court that said petitioner is entitled to bring said suit, and that it is just, equitable and proper that said petitioner be granted permission to bring said foreclosure suit.

IT IS THEREFORE ORDERED, that the petitioner, Pondera Valley State Bank, as Trustee, be and it is hereby granted permission to file said foreclosure complaint in the District Court of the Eighth Judicial District of the State of Montana, in and for the County of Teton, and to prosecute its said action against [103] said Conrad City Water Company and the other defendants named in said complaint for the purpose of foreclosing upon said Mortgage or Deed of Trust above referred to.

ORDER made and entered in open Court this 23d day of June, 1915.

H. H. EWING,  
Judge.

(Filed June 23d, 1915.)

**Defendant's Exhibit 12—Order Granting Motion of  
Pondera Valley State Bank to Intervene etc.**

[Title of Court and Cause.]

**ORDER GRANTING MOTION OF INTERVEN-  
TION.**

The complaint in intervention of Pondera Valley State Bank, as Trustee, having been this day presented to this court and leave asked in open court to file the same by counsel for Pondera Valley State Bank, the intervenor named therein, it appearing

that good cause exists therefor, IT IS HEREBY ORDERED that leave be and it is hereby granted to file the same and that the said Pondera Valley State Bank as Trustee be permitted to intervene in said cause.

Order made and entered in open Court this 23d day of June, 1915.

H. H. EWING,  
Judge.

(Filed June 12th, 1915.)

Thereupon defendant rested.

Thereupon, after argument by counsel, the case was submitted to and taken under advisement by the Court, and thereafter, on the 1st day of November, 1916, the Court rendered his decision, in words and figures as follows, to wit: [104]

[Title of Court and Cause.]

### Decision.

In this court in a law action *in personam*, plaintiff procured an attachment of the defendant Water Company's realty, and recovered judgment against said defendant for Nine Thousand Dollars (\$9,000). It brings this suit alleging that execution upon said judgment was fruitless in that intermediate judgment and execution a suit against said defendant was brought in a court of this State to foreclose a mechanic's lien for Fifty-four and 70/100 (\$54.70), wherein allegations of insolvency, chaos and probably damage to the lien claimant were made, resulting in the appointment of a receiver of all of said defendants' property, the receiver then and at all times



hitherto being in possession thereof. Other allegations are that the mechanic's lien is invalid or inferior to plaintiff's attachment; that the complaint therein was not sufficient to confer jurisdiction upon the State court to appoint a receiver; that the foreclosure suit was of a scheme to hinder and delay satisfaction of plaintiff's judgment, and that plaintiff's attachment and judgment are entitled to priority over an antecedent Eighty Thousand Dollar (\$80,000) bond issue of said defendant, security for antecedent debts.

The plaintiff in the foreclosure suit, the receiver, the trustee in the trust deed securing the bonds, a trustee [105] holding the bonds, and the latter's beneficiaries, are joined as defendants herein. The prayer is a decree establishing priority of said attachment and judgment, a receiver, and further relief.

Defendants deny lack of jurisdiction in the State court, deny invalidity and inferiority of the mechanics' lien, deny the alleged scheme, deny priority of plaintiff's attachment and judgment over the bond issue, and allege that subsequent to this suit the trustee in the trust deed in that behalf intervened in the mechanics' lien suit, sued to foreclose the trust deed, joining this plaintiff as defendant, wherein the Court extended the existing receivership to the latter suit; that by reason thereof the State court has "exclusive jurisdiction of all the affairs and assets" of the water company; and that the instant suit should abate for that it was instituted against the receiver without leave of the State Court.

These jurisdictional questions should have been presented to the Court *in limine*, but were not, and this suit has been tried on the merits. They have not been and could not be waived, in that even if parties consent a court will not knowingly invade this jurisdiction of another court. As these issues of jurisdiction are determined against plaintiff, the merits will be noticed no further than they ought to be under the circumstances and for possible review. Briefly, the aforesaid allegations of the complaint are found to be true, and plaintiff's attachment and judgment are entitled to priority over the bonds for that the latter are invalid, having been issued and now and at all times held to secure pre-existing debts, in violation of the Constitution of this State, wherein the Water Company is incorporated, that no corporate bonds shall issue "except for labor done, services performed, or money, or property, actually received." [106]

See Chavelle vs. Trust Co., 226 Fed. 408.

In re Paper Corp., 229 Fed. 489.

If this State Court receivership is void, if the receiver was appointed without jurisdiction, his possession would not be that of the State Court and would not effect jurisdiction herein.

See Hammock vs. Trust Co., 105 U. S. 86.

But although the mechanics' lien appears a fiction and the foreclosure and receivership for ulterior purposes, the suit was within the State Court's equity jurisdiction, and wherein a receiver could be lawfully, even if improvidently, appointed.

The otherwise sufficiency of the complaint and the

evidence before the State Court cannot be questioned here, but only in a court having power to review the State Court, which this court has not.

See *Shields vs. Coleman*, 157 U. S. 178.

*McKinney vs. Landon*, 209 Fed. 303.

The appointment was valid, and since a suit against the receiver, without leave of the State Court, is a trespass against said court upon which no right can be founded, this court will not entertain it.

See *Porter vs. Sabin*, 149 U. S. 480.

The receivership in the lien suit merged in that of the bond suit, and if the former suit is questionable in scope or jurisdiction, the latter is not, and the merger was without interregnum in the State Court's possession of the property in which the instant suit could attach. It is settled beyond controversy that for obvious reasons when property is in *custodia legis*, the court in possession is vested with optional exclusive jurisdiction to hear and determine all controversies affecting title, possession and control of the [107] property. Unless it consents to exercise of like jurisdiction by other courts, they are without such jurisdiction.

*Palmer vs. Texas*, 212 U. S. 129.

*Murphy vs. Co.*, 211 U. S. 569.

*Wabash Ry. vs. College*, 208 U. S. 54, 611.

Plaintiff's attachment of the Water Company's realty, by filing notice thereof with the recorder of the county of the realty's situs, created but a lien for security to pay the judgment.

See *Rounds vs. Foundry*, 237 U. S. 308.

It did not draw the realty into this court's custody,

and was no barrier to other liens and actual seizure by other courts. It is no more potent than a judgment lien, and even levy of execution upon land, without possession, does not bring the land in *custodia legis*, does not disable another court from subsequent receivership over it; and such receivership had, a sale upon such levy is void.

Wiswall vs. Sampson, 14 How. 52.

Heidritter vs. Elizabeth Co., 112 U. S. 303.

Hence said attachment did not disable the State Court to appoint and possess the property by a receiver. This court is without jurisdiction, and decree for defendants.

BOURQUIN, J.

And thereupon judgment was rendered accordingly.

COMES NOW THE PLAINTIFF and appellant in the above-entitled cause, and presents this, its statement of the case, and asks to have the same duly allowed, settled and signed as and for the statement of the proceedings in the said cause at the trial, and as containing all the evidence material to the hearing of the [108] appeal in said cause.

DAY & MAPES,

Attorneys for Plaintiff and Appellant.

**Order Certifying, etc., Statement of Evidence.**

THIS IS TO CERTIFY that the foregoing statement of evidence and proceedings in said cause is hereby allowed; and that it contains all the evidence material to the hearing of the appeal in said cause, and is hereby ordered filed.

Dated this 24th day of January, 1917.

BOURQUIN,  
Judge.

Filed Jan. 24, 1917. Geo. W. Sproule, Clerk.  
[109]

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That on the 2d day of January, 1917, Petition for Appeal and Order Allowing same were duly filed and entered herein, being in the words and figures following, to wit: [110]

[Title of Court and Cause.]

**Petition on Appeal.**

To the Honorable GEORGE M. BOURQUIN, District Judge:

The above-named Pacific Coast Pipe Company, feeling aggrieved by the decree rendered and entered in the above-entitled cause on the 1st day of November, 1916, does hereby appeal from said decree to the Circuit Court of Appeals for the Ninth Circuit, for the reasons set forth in the assignment of errors filed herewith, and prays that its appeal be allowed and that citation be issued as provided by law, and that a transcript of the record, proceedings and documents upon which said decree was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit, under the rules of such court in such cases made and provided.

And your petitioner further prays that the proper order relating to the required security to be required of it be made.



Dated January 2d, 1917.

DAY & MAPES,

Attorneys for Pacific Coast Pipe Co., Complainant  
and Appellant.

Appeal allowed upon giving bond as required by  
law for the sum of \$300.

Dated January 2, 1917.

BOURQUIN,

Judge.

Filed and Entered Jan. 2, 1917. Geo. W. Sproule,  
Clerk. [111]

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That on the 2d day of January, 1917, Assignment  
of Errors was duly filed herein, in the words and  
figures following, to wit: [112]

[Title of Court and Cause.]

### **Assignment of Errors.**

Comes now the plaintiff in the above-entitled cause  
and files the following assignment of errors upon  
which it will rely upon its prosecution of the appeal  
in the above-entitled cause, from the decree made by  
this Honorable Court on the 1st day of November,  
1916.

#### **I.**

That the United States District Court for the Dis-  
trict of Montana erred in holding that the said Dis-  
trict Court was without jurisdiction to determine the  
matters and things involved in said cause.

#### **II.**

That the United States District Court for the Dis-  
trict of Montana erred in holding that the District  
Court of the Eighth Judicial District of the State of

Montana, in and for the county of Teton, acquired exclusive jurisdiction to hear and determine all controversies affecting the title, possession and control of the property of the defendant Conrad City Water Company by reason of the proceedings set forth in the records on file [113] herein.

WHEREFORE the appellant prays that the said decree be reversed and that said District Court for the District of Montana be ordered to enter a decree reversing the decision of the lower court in said cause.

Dated January 2d, 1917.

DAY & MAPES,  
Attorneys for Appellant.

Filed Jan. 2, 1917. Geo. W. Sproule, Clerk.  
[114]

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Thereafter, on January 3, 1917, Bond on Appeal was duly approved and filed herein, in the words and figures following, to wit:

[Title of Court and Cause.]

**Bond on Appeal.**

KNOW ALL MEN BY THESE PRESENTS:  
The Pacific Coast Pipe Company, a corporation, as principal, and the Maryland Casualty Company, a corporation organized and existing under the laws of the State of Maryland, authorized to become surety on bonds and undertakings required by the laws of the United States, as surety, are held and firmly bound unto Conrad City Water Company, a corporation, Pondera Valley State Bank, a corporation,

Conrad Banking Company, a corporation, Conrad Trust and Savings Bank, a corporation, Conrad Mercantile Company, a corporation, James T. Stanford, Receiver, and Paris B. Bartley, Trustee, in the sum of Three Hundred Dollars (\$300), lawful money of the United States, to be paid to them or their respective executors, administrators and successors; for which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and each of our successors and assigns by these presents. Whereas the above-named Pacific Coast Pipe Company has prosecuted an appeal to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the decree of the District Court for the District of Montana in the above-entitled cause.

Now, Therefore, the condition of this obligation is such that if the above-named Pacific Coast Pipe Company shall prosecute its said appeal to effect and answer all costs if it fail to [115] make good its plea, then this obligation shall be void; otherwise to remain in full force and effect.

In Witness Whereof, we have caused this instrument to be signed in our corporate names by our respective attorneys this 2d day of January, 1917.

PACIFIC COAST PIPE COMPANY,

By DAY & MAPES,

Its Attorneys.

[Seal] MARYLAND CASUALTY COMPANY,

LOUIS F. SCHROEDER,

Attorney in Fact.

T. A. MAPES,

Attorney in Fact.

The within bond is approved both as to sufficiency and form this 2d day of January, 1917.

BOURQUIN,

Judge.

Filed Jan. 3, 1917. Geo. W. Sproule, Clerk.  
[116]

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Thereafter, on January 3, 1917, Citation was duly issued herein, which original Citation is hereto annexed and is in the words and figures following, to wit: [117]

*In the District Court of the United States, District  
of Montana.*

IN EQUITY.

PACIFIC COAST PIPE COMPANY, a Corporation,  
tion,

Complainant,

vs.

CONRAD CITY WATER COMPANY, a Corporation,  
tion, PONDERA VALLEY STATE BANK,  
a Corporation, CONRAD BANKING COMPANY,  
a Corporation, CONRAD TRUST & SAVINGS BANK,  
a Corporation, CONRAD MERCANTILE COMPANY,  
a Corporation, JAMES T. STANFORD, Receiver, and  
PARIS B. BARTLEY, Trustee,

Defendants.

**Citation on Appeal.**

United States of America,—ss.

To Conrad City Water Company, a Corporation,  
Pondera Valley State Bank, a Corporation,  
Conrad Banking Company, a Corporation, Con-  
rad Trust and Savings Bank, a Corporation,  
Conrad Mercantile Company, a Corporation,  
James T. Stanford, Receiver, and Paris B.  
Bartley, Trustee, GREETING:

You are hereby cited and admonished to be and appear at the Circuit Court of Appeals of the United States, to be held at the city of San Francisco, in the State of California, on the 2d day of February, A. D. 1917. Pursuant to an order allowing an appeal filed and entered in the clerk's office of the District Court of the United States for the District of Montana from a final decree signed, filed and entered on the 1st day of November, 1916, in that certain suit, being in equity No. 55, wherein the Pacific Coast Pipe Company is plaintiff and you are the defendants and appellees, to show cause, if any there be, why the decree rendered against the said [118] appellant, as in said order allowing appeal mentioned, should not be corrected and why justice should not be done to the parties in that behalf.

WITNESS the Honorable GEORGE M. BOURQUIN, United States District Judge for the District of Montana, this 3d day of January, 1917, and of the Independence of the United States the 141st.

BOURQUIN,

United States District Judge for the District of  
Montana.



Copy of the foregoing Citation on Appeal received this 4th day of January, 1917.

O. W. McCONNELL,  
Atty. for Defendants. [119]

[Endorsed]: No. 55. In the District Court of the United States, District of Montana. Pacific Coast Pipe Co., a Corporation, Complainant, vs. Conrad City Water Co., a Corporation et al., Defendants. Citation on Appeal. Filed Jan. 5, 1917. Geo. W. Sproule, Clerk. [120]

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Thereafter, on Jan. 11, 1917, Praecept for Transcript was duly filed herein, in the words and figures following, to wit:

[Title of Court and Cause.]

**Praecept for Transcript of Record.**

To George W. Sproule, Clerk of Said Court:

In the preparation of the record on appeal in the above-entitled cause, you will incorporate into the transcript the following papers and documents only:

1. The Bill of Complaint.
2. The Answer of the defendants Conrad City Water Company, Pondera Valley State Bank, Conrad Banking Company, Conrad Trust and Savings Bank, Conrad Mercantile Company, Paris B. Bartley, Trustee.
3. You will note in the transcript the filing of the answer of the defendant John T. Stanford, Receiver, and the fact that its allegations are in substance identical with those of the answers of the defendants set forth at length.

4. The Statement of the Evidence When Settled.
5. The Petition, Order and Bond on Appeal.
7. Citation on Appeal.

Dated January 11th, 1917.

DAY & MAPES,  
Attorneys for Appellant.

Service of foregoing praecipe and receipt of copy acknowledged this 11th day of January, 1917.

O. W. McCONNELL,  
Attorney for Defendants.

Filed Jan. 11, 1917. Geo. W. Sproule, Clerk.  
[121]

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Thereafter, on January 24, 1917, an Order Extending Time for Return of Citation was duly made and entered herein as follows, to wit:

[Title of Court and Cause.]

**Order Extending Time to March 5, 1917, for Return to Citation on Appeal.**

This matter coming on to be heard, upon motion of the plaintiff and appellant, by Messrs. Day & Mapes, its attorneys, for an extension of time for the return of the citation on appeal herein, and upon consideration of the motion and good cause appearing, it is ordered that the time for the return of citation on appeal in the above-entitled cause, which was heretofore made returnable on the 2d day of February, 1917, be, and the same is hereby, extended thirty days from the said 2d day of February, 1917, to the 5th day of March, 1917.

Done in open court this 24th day of January, 1917.

GEO. M. BOURQUIN,

Judge.

Entered Jan. 24, 1917. Geo. W. Sproule, Clerk.

[122]

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**Certificate of Clerk U. S. District Court to Transcript  
of Record.**

United States of America,  
District of Montana,—ss.

I, Geo. W. Sproule, Clerk of the United States District Court for the District of Montana, do hereby certify and return to the Honorable, the United States Circuit Court of Appeals for the Ninth Circuit, that the foregoing volume, consisting of 122 pages, numbered consecutively from 1 to 122, inclusive, is a true and correct transcript of the pleadings, orders and decree, and all other proceedings in said cause required to be incorporated in the record on appeal therein by the praecipe of the appellant for said record on appeal, including said praecipe, and of the whole thereof, as appears from the original records and files of said court in my possession as such clerk; and I do further certify and return that I have annexed to said transcript and included within said pages the original citation issued in said cause.

I further certify that the costs of the transcript of record amount to the sum of Forty-eight and 45/100 Dollars (\$48.45) and have been paid by the appellant.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said court at Helena, Montana, this 8th day of February, A. D. 1917.

[Seal]

GEO. W. SPROULE,  
Clerk.

By C. R. Garlow,  
Deputy Clerk. [123]

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[Endorsed]: No. 2937. United States Circuit Court of Appeals for the Ninth Circuit. Pacific Coast Pipe Company, a Corporation, Appellant, vs. Conrad City Water Company, a Corporation, Pondera Valley State Bank, a Corporation, Conrad Banking Company, a Corporation, Conrad Trust & Savings Bank, a Corporation, Conrad Mercantile Company, a Corporation, James T. Stanford, Receiver, and Paris B. Bartley, Trustee, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the District of Montana.

Filed February 13, 1917.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.

